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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XXXVIII

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

JANUARY, 1916, TO APRIL, 1916

REPORTED BY THE COMMISSION



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INTERSTATE COMMERCE COMMISSION.

BALTHASAR H. MEYER, *Chairman.*

JUDSON C. CLEMENTS.

EDGAR E. CLARK.

JAMES S. HARLAN.

CHARLES C. McCHORD.

HENRY C. HALL.

WINTHROP M. DANIELS.

GEORGE B. McGINTY, *Secretary.*

March 17, 1916, COMMISSIONER McCHORD's term as chairman expired; on that date COMMISSIONER MEYER became chairman.

XXIX

INTERSTATE COMMERCE COMMISSION REPORTS.

INVESTIGATION AND SUSPENSION DOCKET NO. 642. NEW ORLEANS-TEXAS RATES.

Submitted November 19, 1915. Decided January 31, 1916.

Proposed increased class rates between New Orleans, La., and Orange, Beaumont, Houston, and Galveston, Tex., and commodity rates to Orange, Beaumont, and points taking the same rates, found to have been justified. Order of suspension vacated.

C. W. Owen; F. H. Wood; Denegre, Leovy & Chaffe; and Baker, Botts, Parker & Garwood for respondents.

Theodore Brent for New Orleans Joint Traffic Bureau, protestant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This proceeding involves the propriety of certain proposed increased class rates, governed by the western classification, between New Orleans, La., and Orange, Beaumont, Houston, and Galveston, and other points in the state of Texas taking the same rates. There are also involved increased commodity rates to Orange, Beaumont, and points taking the same rates. The schedule containing the proposed increased rates was filed to become effective May 20, 1915, but upon protest of the New Orleans Joint Traffic Bureau has been suspended until March 17, 1916.

On December 9, 1914, the New Orleans Joint Traffic Bureau filed a complaint, Docket No. 7561, against various carriers serving directly, or by connections, New Orleans and the Texas points above named, in which it is alleged that rates on numerous specified commodities from New Orleans to the Texas points involved, higher than the class rates which otherwise would apply on the same commodities, are unreasonable and unjustly discriminatory. At the hearing in that case the defendants stated that they proposed to increase the class rates; that if such proposed rates became effective the basis for the complaint would no longer exist; and that the commodity rates of which complaint is made would remain in effect, subject to an alternative clause in the tariff which would make applicable the lower rate

whether class or commodity. The complaint referred to has been heard and submitted. It will be disposed of in a separate report. It is referred to here because it is stated by the defendants to have been one of the inducements which led them to file the schedule here under consideration. The evidence submitted in the formal case is relied upon, in part, to justify the increased rates, and a copy of the testimony is filed in this record.

Orange is located near the Sabine River, which forms in part the Louisiana-Texas boundary line, 257 miles west of New Orleans; Beaumont 21 miles west of Orange; Houston west of Beaumont, 362 miles from New Orleans; and Galveston 57 miles southeast of Houston.

The following table gives, in cents per 100 pounds, the scale of class rates now in effect from New Orleans to Orange, Beaumont, Houston, and Galveston, and the scales proposed to be made effective by the suspended schedule:

	1	2	3	4	5	A	B	C	D	E
The current scale from New Orleans to Orange, Beaumont, Houston, and Galveston, and intermediate points.....	80	64	50	40	33	35	30	27	26	25
Proposed scale from New Orleans to Orange and points intermediate to the Texas state line.....	82	72	62	53	43	44	40	33	28	25
Proposed scale from New Orleans to Beaumont and points intermediate Orange to Beaumont and points south of Beaumont on the T. & N. O. and T. & Ft. S.....	86	75	65	55	44	45	41	34	28	25
Proposed scale from New Orleans to Houston and Galveston and intermediate points west and north of Beaumont, taking Houston rates.....	89	78	67	57	45	46	42	35	27	25

There has been for many years, and is now, in effect from New Orleans, and points taking the New Orleans rate, to Orange and Beaumont a so-called "water scale" which is published under the limitation in the tariff which specifies that "the rates named apply from Louisiana points named to Texas points named only, and are not applicable as basing rates on shipments from beyond." This scale is as follows, in cents per 100 pounds:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	60	56	48	40	30	31	30	27	26	25

It is asserted by the respondents that all through commodity rates from St. Louis and points of origin in defined territories to Texas points via New Orleans are based on the 80-cent scale, and that there is no through commodity rate made by using the 60-cent scale as a factor.

An exhibit filed by the protestant gives the history of the class rates from New Orleans and St. Louis to Houston and Galveston from November 26, 1891, up to the date of the filing of the suspended schedule, as follows:

	1	2	3	4	5	A	B	C	D	E
Nov. 26, 1891:										
New Orleans.....	70	80	50	40	33	35	30	27	26	25
St. Louis.....	120	100	85	70	58	60	55	52	46	30
Dec. 4, 1893:										
New Orleans.....	70	80	50	40	33	35	30	27	26	25
St. Louis.....	130	113	97	90	70	70	60	52	43	36
Dec. 12, 1896:										
New Orleans.....	70	80	50	40	33	35	30	27	26	25
St. Louis.....	130	113	97	90	70	70	60	52	43	36
Apr. 11, 1903:										
New Orleans.....	70	80	50	40	33	35	30	27	26	25
St. Louis.....	137	121	104	96	75	79	70	58	46	39
Sept. 7, 1908:										
New Orleans.....	80	88	58	46	38	41	35	31	30	29
St. Louis.....	147	129	112	102	80	85	75	62	50	43
May 15, 1911: New Orleans.....	80	84	50	40	33	35	30	27	26	25
Nov. 17, 1911: St. Louis.....	147	125	104	96	75	79	70	58	46	39

To justify the proposed increased rates respondents assert that the current rates are the direct result of water competition, and are therefore unduly low. The class rates now in effect from New Orleans to Texas common points are based on a scale beginning at 137 cents first class. Orange, Beaumont, Houston, and Galveston are not in the Texas common-point group. Because, it is asserted, of the influence of water competition at Galveston, and the application of the scale of state rates in effect from Galveston to Houston, rates from New Orleans to Houston and Galveston are practically all lower than to Texas common points; and this situation is reflected in the rates to Beaumont and Orange. The rates from St. Louis to Houston and Galveston are lower upon many commodities than the rates to Texas common points found reasonable in *Railroad Commission of Texas v. A., T. & S. F. Ry.*, 20 I. C. C., 463.

The respondents also compare the proposed rates with those prescribed by the Commission in numerous cases involving rates in the same general territory, where, it is asserted, transportation conditions are similar to those prevailing from New Orleans to the Texas points involved.

In *Williams Co. v. V., S. & P. Ry.*, 16 I. C. C., 482, which involved class rates from Vicksburg, Miss., to Texas common points, we found the following scale not to be unreasonable:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	137	115	94	87	69	72	64	52	40	33

The distance from Vicksburg to Waskom, Tex., the nearest point in Texas common-point territory, is 192 miles. The distance from New Orleans to the same point is 330 miles, with the same scale of rates as applicable from Vicksburg. It is to be noted, however, that both scales apply to all points in the large Texas common-point group.

38 I. C. C.

In *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, a scale of class rates was prescribed for single-line hauls from Oklahoma points to Texas points for distances ranging from 10 miles and under to 450 miles. For distances of 260 and over 240 miles, corresponding to the distance from New Orleans to Orange and less than to Beaumont, the rates prescribed were as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	82	72	62	53	43	44	40	33	25	20

In *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 34 I. C. C., 472, for distances of 260 and over 250 miles, we prescribed class rates to apply between Shreveport, La., and certain Texas points, for single-line hauls, as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	82	73	63	59	44	45	40	34	24	19

In *Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co.*, 32 I. C. C., 247, we permitted a 137-cent scale to be maintained as a maximum with respect to traffic moving from Houston to interior Louisiana points. A 70-cent scale to Alexandria and certain other Louisiana points was not, however, permitted to be increased to 80 cents, not having been justified on the record in that case.

Rates based on the sums of the rates from Houston to Shreveport or Alexandria, La., and the rates beyond, as appearing in an exhibit filed by respondents, yield the following amounts, in cents per 100 pounds, for distances shown:

Houston, Tex., to—	Miles.	1	2	3	4	5	A	B	C	D	E
Athens, La.....	280	120	102	85	68	52	63	49	38	34	29
Gloster, La.....	255	90	78	67	55	44	47	39	34	31	25
Oxford, La.....	277	90	78	67	55	45	48	40	35	32	26
Bonita, La.....	366	137	115	94	87	69	72	64	52	40	33
Castor, La.....	280	112	94	81	66	54	57	49	39	35	28
Cotton Valley, La.....	280	108	90	76	62	52	55	47	37	34	27
Sibley, La.....	258	102	84	71	56	45	49	43	34	31	26
Arcadia, La.....	279	109	94	78	62	49	54	45	40	38	33
Dehi, La.....	363	126	115	94	81	66	71	62	52	40	33
Nimock, La.....	258	95	83	72	61	43	40	40	35	33	25½
Pirmont, La.....	280	109	93	81	70	48	54	44½	39½	37½	28
Ravencamp, La.....	258	99	88	77	66	51	56	47	42	40	33
Montgomery, La.....	277	111	97	86	75	54	60	47½	42½	40½	31½
Chamberlain, La.....	363	120	99	80	65	53	53	46	41	38	35
Hollingsworth, La.....	258	90	75	65	50	39	42	35	30	27	24
Lewis, La.....	258	90	75	65	50	39	42	35	30	27	24
Trenton, La.....	258	90	75	65	50	39	42	35	30	27	24

The proposed increased rates are the same as, or lower than, those prescribed for similar distances in the *Oklahoma case*, *supra*, with certain exceptions hereinafter referred to. The comparison is shown by the following table:

New Orleans to—	1	2	3	4	5	A	B	C	D	E
Orange, Tex. (258 miles):										
Proposed scale.....	82	72	62	53	43	44	40	33	26	25
Oklahoma scale.....	82	72	62	53	43	44	40	33	25	20
Beaumont, Tex. (278.9 miles):										
Proposed scale.....	86	75	65	55	44	45	41	34	26	25
Oklahoma scale.....	86	75	65	55	44	45	41	34	26	21
Houston, Tex. (363 miles):										
Proposed scale.....	89	78	67	57	45	46	42	35	27	25
Oklahoma scale.....	102	88	74	64	50	51	47	39	31	26

At the hearing it was stated in behalf of respondents that should the proposed rates be sustained by the Commission they would promptly revise the schedule in the following particulars to conform more nearly to the Oklahoma scale: At Orange the class D rate would be made 1 cent lower, and class E 4 cents lower; at Beaumont the class E rate would be made 4 cents lower; and at Houston the class E rate would be made 3 cents lower.

In the schedule it will be noted that the proposed increased rates are made applicable from New Orleans to three groups. The average distance to each group is shown by the following table:

From New Orleans to—	Miles.
Echo.....	254
Orange.....	260
Average.....	257
Tulane.....	268
Sabine.....	312
Average (including Beaumont).....	289
Amelia.....	287
Galveston.....	423
Average (including Houston).....	355

Except to the Orange group, the rates proposed are lower at the principal points than those fixed in the *Oklahoma case, supra*, because the scale is made upon average distances. Rates to the Houston group are made on a distance of 300 miles. The average distance is 355 miles.

It is proposed by the respondents to cancel the 60-cent so-called water scale in effect from New Orleans to Beaumont and Orange. They assert that this scale was named originally to meet water competition. It is shown that no boats have engaged in traffic from New Orleans to Orange and Beaumont for many years. The application of this scale, as before stated, is limited to points of origin and destination named and is not to be used in connection with traffic from beyond. If this scale were continued and were made applicable

as a basing factor from St. Louis and defined territories, through rates to many Texas points would be reduced. On the other hand, the scale as restricted results in a departure from that rule of the fourth section of the act which inhibits the charge of any greater compensation as a through route than the aggregate of the intermediate rates, being lower than the 80-cent basing scale applicable to traffic moving through New Orleans to Orange and Beaumont.

The protestant shows that the proposed increased rates will disturb an adjustment, as between New Orleans and the Texas points involved, on the one hand, and rates from St. Louis, Kansas City, Mo., Chicago, Ill., and New York, N. Y., to the same destinations, on the other hand, that has existed for many years. Carriers for a long period of time have generally published from St. Louis, Kansas City, and Chicago the Texas common-point rates to Houston and Galveston with respect to numbered and lettered classes. New Orleans has had a much lower basis. Since April 11, 1903, New Orleans has had rates which are less than the class rates from St. Louis to Houston and Galveston in the following amounts:

Classes.....	1	2	3	4	5	A	B	C	D	E
Difference.....	67	61	54	56	42	44	40	31	20	14

Under the proposed rates the differences will be as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Difference.....	58	47	37	39	30	33	28	23	19	14

The protestant compares the ton-mile yield on traffic from New Orleans under the proposed class rates to the points involved with the lower yield from traffic under the corresponding rates to the same points from St. Louis, all rail, and from New York by water and rail, and contends that the results are conclusive that the proposed rates are too high. Ton-mile revenues under class rates, involving carload and less-than-carload shipments indiscriminately, especially in the absence of a showing of similar circumstances and conditions surrounding the transportation, are not of controlling influence. If, however, such data were to be taken as of controlling effect, the ton-mile yield on similar traffic from St. Louis to Texas common points might also be cited in comparison. Such a comparison would show that the proposed rates are not out of line.

For example, taking Waco, Tex., 800 miles from St. Louis, as a central point in Texas common-point territory, the average of the 10 classes is now 83.9 cents per 100 pounds, or \$16.70 per ton, which yields 21 mills per ton-mile. Under the proposed rates from New Orleans to the Orange group the average of the 10 classes is 49.2 cents, and on the basis of 289 miles would yield 34 mills; to Houston the average of the 10 classes is 50.8 cents, and on the basis of 355 miles would yield 28.6 mills.

It is not proposed to increase any of the commodity rates now in effect to the Houston-Galveston group. It is shown of record that of the numerous commodity rates 87 are higher than the corresponding class rates. This unusually large number of higher commodity rates, it is asserted by respondents, is the result of increases in class rates made by carriers from all points of origin to Texas points in 1908, and the action taken thereon by the Commission in *Railroad Commission of Texas v. A., T. & S. F. Ry., supra*. In 1908 all class and commodity rates to all Texas points were increased the same amount in cents per 100 pounds from defined territories to Texas common points and from St. Louis and New Orleans to Houston, Beaumont, and Orange. In the *Railroad Commission of Texas Case* these increased class rates from St. Louis to Texas common points were condemned, except to the extent of the increases in first and second classes. The increased commodity rates were not condemned. As a result, when the class rates from St. Louis and New Orleans to the Texas points were reduced, commodity rates from New Orleans on the articles named by the complainant in the formal complaint, now pending and first herein above referred to, in many instances became higher than the class rates for the same articles. It also appears that an unusually large number of commodity rates were published from New Orleans to Texas points because it is impossible to assimilate on through shipments the descriptions, minimum weights, etc., as between the southern and western classifications.

The list of commodities includes the following: Agricultural implements; ammunition; bagging; cotton-bale covering; baking goods; sewer pipe and draintile; roasted coffee; rope and twine; eggs; telephone and telegraph cables; excelsior; chair and school-desk stock; plate glass; window glass; sirup; ax handles; harness and saddlery; wagon axles; steel billets; castings; nuts; rivets; bolts; piling, iron or steel; sash weights; bar, pipe, and sheet lead; leather, harness, and sole leather; building lime; sewing machines; peanuts; linseed oil; petroleum oil and its products; oil-well supplies; paint ground in oil, and putty; paper, book cover, document, manila, cardboard, bristol board, etc.; building or roofing paper; printing paper, printed paper bags; tabs and tablets; iron and steel pipe and cast-iron pipe; pull rods and sucker rods; garden, alfalfa, clover, and timothy seed; stone and manufactures of same; stove and stove furniture; gas, gasoline, and oil stoves; tin cans and tin plate; smoking tobacco; beans, peas, onions, and potatoes; vehicles; farm and truck wagons; wire articles, including wire and copper rope.

The above enumeration does not include all the articles which take commodity rates higher than the class rates on shipments from New

Orleans to the Texas points involved, but those named are sufficient to show that the list covers a large number of articles which usually move from jobbing points. The record does not show the amount of traffic moving from New Orleans under the class and commodity rates. The character of the articles taking commodity rates, however, warrants the conclusion that the movement under them must be of considerable magnitude. Since December, 1911, the commodity rates higher than the class rates have been in effect. The alternative clause in the proposed tariff will make some reductions in the current rates. It is stated by respondents that the application of the alternative provision in connection with the proposed class rates will result in a reduction of 16 rates to Houston and 17 rates to Beaumont and Orange.

With respect to the increased commodity rates to Orange and Beaumont it is stated by protestant on brief that they are "relatively of minor importance and hinge more or less upon the decision of the class rates to Houston." In other words, the readjustment of the class rates requires that some commodity rates must be changed to preserve a more just relationship. There are 19 articles on which increases in specific commodity rates are proposed. For example, beer, in carloads, takes fifth-class rating in the western classification. The fifth-class rate from New Orleans to all the points involved is now 33 cents per 100 pounds. The present rate on beer is 30 cents. It is proposed to increase it to 31 cents. The proposed fifth-class rate from New Orleans to Beaumont is 44 cents and to Orange 43 cents. Plug tobacco in less than carloads is rated first class in the classification. The first-class rate is now 80 cents from New Orleans. The present commodity rate is 48 cents. The proposed first-class rate to Beaumont is 86 cents and the proposed commodity rate is 65 cents. These examples are generally characteristic of the proposed increases. Reference is made by protestant to a proposed increase in the minimum weight on carloads of beer from 26,000 to 30,000 pounds. There is no claim that 30,000 pounds can not be loaded. It is insisted that the charges per car will be increased, and the relation between New Orleans, St. Louis, and Milwaukee, Wis., disturbed.

The protestant asserts that the ability of New Orleans merchants to sell commodities in Texas in competition with shipments from New York and St. Louis will be greatly curtailed if the proposed rates are allowed to become effective; and that an adjustment of rates that has been in effect so many years predicated on certain differentials under rates from points which compete with New Orleans ought not to be changed on such a showing as the respondents have made. It is shown by the protestant that an increase of rates to Houston

means an increase in rates to 280 Texas points, which take rates based on Houston. That is to say, the measure of the through class rates from New Orleans to Texas points beyond Houston is the rate to Houston plus the Texas commission rate beyond. The amount of increase to the Texas points beyond Houston would be the same in cents per 100 pounds on each class as the increase to Houston, limited by the New Orleans-Texas common-point rates as maxima. To a much more limited extent the increased rates to Orange and Beaumont will be reflected in rates to points in their vicinity.

Protestant refers to the 60-cent scale of rates in effect from New Orleans to Alexandria, Monroe, and Shreveport, La., and similar scales of rates to water competitive points north, west, and east of New Orleans, for distances comparable to the distances from New Orleans to Orange and Beaumont. The scales of rates referred to, it is insisted by respondents, were originally established to meet water competition, and have been held down, in many cases, by the action of state authorities. An application has been filed with the state commission of Louisiana by the respondents to raise the 60-cent scales to 80 cents. The application has not been passed on by the state commission.

In passing upon the reasonableness of a scale or system of rates we may not properly consider only the points of origin and destination. We are bound to consider and give due weight to what has been found by us in other cases involving rates applicable from and to points in the same general territory where transportation conditions are substantially similar. This must be done in order that the structure of rates in any given territory may be properly related, and form as a whole a harmonious and consistent adjustment. Each city or shipping point is entitled to advantages in rates which spring from its location, with the limitation that the rates must be reasonable and not unduly discriminatory. Rates from or through the Mississippi River gateways to points in the states of Arkansas, Louisiana, and Texas have been brought to our attention in numerous cases. In *Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., supra*, 247, 248, it is stated that—

In the first place the whole system of rates between Texas and Louisiana points is admittedly imperfect and unsatisfactory. Many of the commodity rates are higher than the corresponding class rates; some of the rates on traffic moving from east to west are considerably lower than the rates in the opposite direction; and there are a number of errors in the tariffs, caused either by the carriers or their agents, or by the printer.

In that case we also said, page 255:

It is stated in the complaint, however, that certain of the defendants have expressed a willingness to adjust the commodity rates in such a way that they will not exceed 38 I. C. C.

the corresponding class rate. We suggest that such an adjustment is doubtless advisable, and that it would tend to put the tariff on a more logical basis. It could be accomplished either by a careful revision of the tariff or by a proper alternative clause.

Respondents point out that in following the suggestion of the Commission the proposed rates will apply in both directions. It is also stated by them that they did not think it could be assumed that in suggesting a revision of respondent's tariffs the Commission meant that the commodity rates should be reduced to the level of the class rates in all instances. The proposed rates, it is asserted by them, place the class rates on a more just basis, and the application of the alternative provision will leave them available where lower.

To effect a more orderly adjustment of rates between New Orleans and the Texas points in question necessarily requires that some of the rates that have been long maintained must be modified, and that relationships will in some measure be changed. The mere fact that the rates proposed to be increased have been in effect for many years does not require that they should be continued indefinitely, if as a matter of fact they are not just and reasonable.

The scale of class rates now in effect from New Orleans to the Texas points here involved is a depressed scale, when compared with scales we have found reasonable for similar distances in the same general territory. The 60-cent scale in effect from New Orleans to Orange and Beaumont, which the respondents propose to cancel, is as low or lower, mileage considered, than the scale of class rates now in effect from the Mississippi River crossings, St. Louis to Dubuque, Iowa, to points on the Missouri River, Kansas City, Mo., to Sioux City, Iowa.

Considering all the facts shown of record, we are of opinion and find that the respondents have justified the proposed increased rates here involved, except those applying to classes D and E hereinbefore mentioned. It is assumed that the reductions in the ratings on those classes will be made promptly. The order of suspension will be vacated.

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No. 7561.

NEW ORLEANS JOINT TRAFFIC BUREAU

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

Submitted April 20, 1915. Decided January 31, 1916.

Commodity rates maintained by defendants on numerous articles from New Orleans, La., to Orange, Beaumont, Houston, and Galveston, Tex., and points taking the same rates not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

Theodore Brent and J. A. Smith for complainant.

F. H. Wood; Baker, Botts, Parker & Garwood; and Denegre Leovy & Chaffe for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a complaint that the defendants maintain from New Orleans, La., to Houston, Galveston, Beaumont, Port Arthur, Orange, Port Neches, East Beaumont, West Port Arthur, and Sabine, Tex., and certain other points in Texas in the vicinity of the points named, commodity rates on a large number of articles which are higher than the class rates, governed by the western classification, otherwise applicable to the same articles; and that the commodity rates are unreasonable and unjustly discriminatory.

At the hearing it was stated in behalf of the defendants that they proposed to increase the class rates in effect between New Orleans and the Texas points named, and to provide by an alternative clause in the tariff for the application of either the class or commodity rate, whichever makes lower. It was asserted that this would remove the ground of the complaint.

The defendants did subsequently file a schedule which proposed to increase certain class rates from New Orleans to Orange, Beaumont, Houston, and Galveston. This increase would apply to the other Texas points named in the complaint, which are either grouped with or take rates based on Orange, Beaumont, and Houston. The schedule was suspended and a hearing had on the proposed increased rates. The proposed increased class rates we have found justified in *New Orleans-Texas Rates*, 38 I. C. C., 1, decided concurrently herewith.

From the facts disclosed we do not find the rates assailed to be unreasonable or unjustly discriminatory, and, the immediate occasion of the complaint in this proceeding having been removed by the increased class rates found to have been justified in the case referred to, this complaint must be dismissed, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 637.
MARBLE FROM RUTLAND, VT.

Submitted October 11, 1915. Decided February 8, 1916.

1. Proposed increased rate for the transportation of marble, sawed, hammered, chiseled, or dressed, in carloads, from Rutland, Vt., and points taking Rutland rates, to St. Paul, Minn., and points taking St. Paul rates, found justified.
2. Proposed increased rate for like transportation of rough quarried marble found unlawful as exceeding the aggregate of intermediate rates subject to the provisions of the act.

F. L. Ballard for Pennsylvania Railroad Company, Pennsylvania Company, and Delaware & Hudson Company.

Lightner & Young for protestants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The tariff item under suspension in this proceeding was filed by the Pennsylvania Railroad Company in behalf of itself, the Pennsylvania Company, and the Delaware & Hudson Company, to become effective May 15, 1915, but upon protest the operation of this item has been suspended until March 12, 1916.

The item is as follows:

Marble, classified sixth class in official classification, from Castleton, Centre Rutland, Fair Haven, Vt., Glens Falls, N. Y., Hydeville, Rutland, and West Rutland, Vt., to western points * * * taking basis St. Paul, 30 cents per 100 pounds, carload, minimum weight 36,000 pounds.

In the official classification the description to which the item makes reference is this:

Marble, * * * n. o. s. (artificial or natural), blocks, slabs, or pieces, rough quarried, sawed, hammered, chiseled, or dressed (not polished), carload lots, class 6.

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The carriers are called upon to justify the rate of 30 cents which is thus proposed and which embodies an increase of 4.1 cents over the rate of 25.9 cents now applicable via the lines above named, which form the Union Line route, from Rutland, Vt., and points of origin taking Rutland rates to St. Paul, Minn., and points taking St. Paul rates. By other lines and routes the rate of 30 cents, published in earlier tariffs, is now in effect. The joint through rate here in issue was proposed to equal the combination of local rates, existing and proposed, on Chicago.

For a period of 15 years or more the rate from these points of origin to Chicago was 17 cents by all lines, and from Chicago to St. Paul 8 cents. The through rate made by the sum of these factors was 25 cents, and applied to marble whether rough quarried or in sawed slabs.

Effective December 1, 1914, the rate to Chicago by all lines was advanced from 17 cents to 20 cents. This rate is now in effect. By tariff schedules filed to take effect on the same date a rate of 10 cents in lieu of the then existing 8-cent rate was proposed for the transportation of "stone and marble, not polished, lettered, or figured," from Chicago and Peoria, Ill., to St. Paul and other points. These schedules were suspended and made the subject of investigation in *Rates on Stone and Marble from Chicago and Peoria*, 34 I. C. C., 390. We there held that the proposed rates had been justified for stone and marble, sawed or dressed, but not for rough stone or marble. The local rate, therefore, at the present time from Chicago to St. Paul on marble, sawed or dressed, not polished, lettered, or figured, is 10 cents, while on rough marble, not sawed, dressed, polished, lettered, or figured, the rate is 8 cents.

From the points here involved to St. Paul via other routes a joint through rate of 30 cents applicable to marble, whether rough quarried or sawed, became effective December 1, 1914. Through delay, explained on this record as caused by pressure in making other rate changes, this rate was not published for the Union Line route until several months later, and its operation has been suspended by our order in this case. In the meantime, however, a joint through rate of 25.9 cents for application via this route had become effective January 15, 1915. This rate was made to equal the sum of the local rate from Chicago to St. Paul, 8 cents, and 17.9 cents, representing the former local rate of 17 cents from Rutland to Chicago, plus the increase following *The Five Per Cent Case*, 32 I. C. C., 325. It was apparently published in error, for, as we have seen, the local rate from Rutland to Chicago had been increased from 17 cents to 20 cents on December 1, 1914.

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The record deals with the rate by one route only out of several and does not present a full disclosure of the facts attendant on transportation of marble. Respondents show that the suspended item was intended to restore parity with the rates by other routes. Their evidence in justification centers in an explanation of this purpose. They offer in addition some evidence intended to show the propriety of the local rate of 20 cents to Chicago, since their division of a joint through rate made on the Chicago combination is the local rate to that point. Thus it is shown that the distance from Rutland to Chicago via the Union Line route is 1,060 miles, for which the local rate of 20 cents yields a revenue per ton-mile of approximately 3.8 mills. It is also shown that on December 1, 1914, rates from New York to Chicago on certain other commodities were increased. Thus the rate on brimstone and sulphur was increased from 16 cents to 20; on marble chips, waste, and dust from 17 cents to 20; on crushed oyster shells from 18½ cents to 20; on whiting from 20 cents to 22½; on gravel, on crude, crushed, or ground limestone, on glass sand, and on crushed stone, from \$3.60 per ton of 2,000 pounds to \$4.

Respondents point to the fact that the local rate of 20 cents to Chicago has not been attacked and that the joint through rates to St. Paul are generally made on the Chicago combination. They urge that they are not concerned with the factor beyond Chicago so long as the rate of 20 cents, which is their division of the proposed joint through rate, is not reduced.

Protestants do not object to the proposed rate of 30 cents as applied to marble not in the rough, but urge for substantially the same reasons as were stated in *Rates on Stone and Marble from Chicago and Peoria, supra*, that the joint through rate should embody a spread as between rough quarried and sawed marble proportionately the same as is now found in the local rates from Chicago to St. Paul. They suggest that as compared with the joint through rate of 30 cents on sawed marble the rate on rough quarried marble should not exceed 25 cents. Inasmuch as the official classification has made no distinction between rough quarried and sawed marble respondents oppose any change in the present relation which would be reflected in their compensation for the haul in official classification territory.

Respondents' burden in an issue of this character is not to protect their divisions of the proposed joint through rate, but to justify that rate as a reasonable charge for the service rendered in the entire movement. The local rate to Chicago is not here involved, except in so far as the fourth section makes unlawful a through rate greater than the aggregate of the intermediate rates. The rate proposed for the transportation of rough quarried marble is 30 cents.

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the aggregate 28 cents. This conflict with the rule of the fourth section results from our decision in *Rates on Stone and Marble from Chicago and Peoria, supra*.

We find unlawful the proposed through rate on rough quarried marble from Rutland, and points taking the same rates, to St. Paul and points taking St. Paul rates. We find that respondents have justified the proposed rate of 30 cents on marble, sawed, hammered, chiseled, or dressed.

Inasmuch as all the rates before us are carried in one item, this item must necessarily be canceled. In publishing new schedules applicable to this traffic respondents should consider the propriety of establishing a spread between the rate on rough quarried marble and the rate on other marble in line with our decision in *Rates on Stone and Marble from Chicago and Peoria, supra*.

An appropriate order will be entered.

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No. 6523.
CITY OF ASTORIA
v.
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
ET AL.

Submitted October 16, 1914. Decided January 22, 1916.

1. Upon the facts disclosed of record, *Held*, That Seattle, Tacoma, and Astoria have a closer geographic and economic relation one to the other than is at this time reflected in the tariffs of the defendant carriers, and that their present rate adjustments unduly discriminate against Astoria and unduly prefer the Puget Sound ports.
2. As to a portion of the so-called inland empire, the defendants are required to put Astoria on a parity of rates with Seattle, Tacoma, and Portland and to make the readjustments described in the report with respect to other portions of the territory involved.

Fulton & Bowerman for complainant.

Carey & Kerr and *C. A. Hart* for Spokane, Portland & Seattle Railway Company; Oregon Electric Railway Company; and Oregon Trunk Railway.

H. A. Scandrett, *W. W. Cotton*, and *A. C. Spencer* for Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, and Camas Prairie Railroad Company.

Charles Donnelly for Northern Pacific Railway Company.

F. V. Brown for Great Northern Railway Company.

F. H. Wood, *W. F. Herrin*, *C. W. Durbrow*, and *W. D. Fenton* for Southern Pacific Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

On the south side of the Columbia River, in the state of Oregon, about 10 miles from the Pacific Ocean, lies the city of Astoria, with a population of 15,000 people. The city of Portland, in the same state, is on the Willamette River about 100 miles inland from Astoria. Seattle and Tacoma, both in the state of Washington, are on Puget Sound, which opens into the Pacific Ocean through the strait of Juan de Fuca, about 150 miles north of the mouth of the Columbia River. With respect to transportation to and from the so-called inland empire, the geographic location of Astoria is said by the complainant to be fully as favorable as the location of Tacoma and Seattle, and on that general ground Astoria is before us asking for relief in the matter of its freight rates.

To and from points east of a line drawn from Buford, in the state of North Dakota, to Trinidad, in the state of Colorado, Astoria is accorded the same rates as Seattle, Tacoma, and Portland; and to many points in Montana west of that line the rates on lumber from all four points are the same. That section of the country extending from the Cascade Mountains on the west to the Rocky Mountains on the east and including the eastern portions of the states of Oregon and Washington, western Montana, and practically the entire state of Idaho, is generally known as the inland empire and is so referred to herein. To and from points in this extensive territory, embracing about 300,000 square miles on or east of the line of the Northern Pacific extending from Pendleton, in the state of Oregon, through Pasco and Kennewick to Spokane, all in the state of Washington, and on or east of the line of the Great Northern extending from Spokane northward, substantially all of which points are in competitive territory, the Portland, Seattle, and Tacoma rates are the same. To and from points north of Kennewick and west of the competitive territory just described, the Seattle and Tacoma rates, with a few exceptions, are lower than the Portland rates, while to and from stations on the Oregon-Washington Railroad & Navigation Company, hereinafter referred to as the Oregon-Washington, east of the Cascade Mountains, excepting Pendleton and competitive points north thereof, and to and from points on the Oregon Short Line, the Seattle and Tacoma rates are higher than the Portland rates. The rates charged by the defendants for the transportation of freight between the port of Astoria and points in the inland empire are generally higher than those charged by the carriers operating between Puget Sound and the Washington coast, on the one hand, and the inland empire, on the other hand. On class traffic between Astoria and the inland empire the rates are made by combination on Portland. A comparison of the rates from Astoria to Spokane with these from Seattle to Spokane follows:

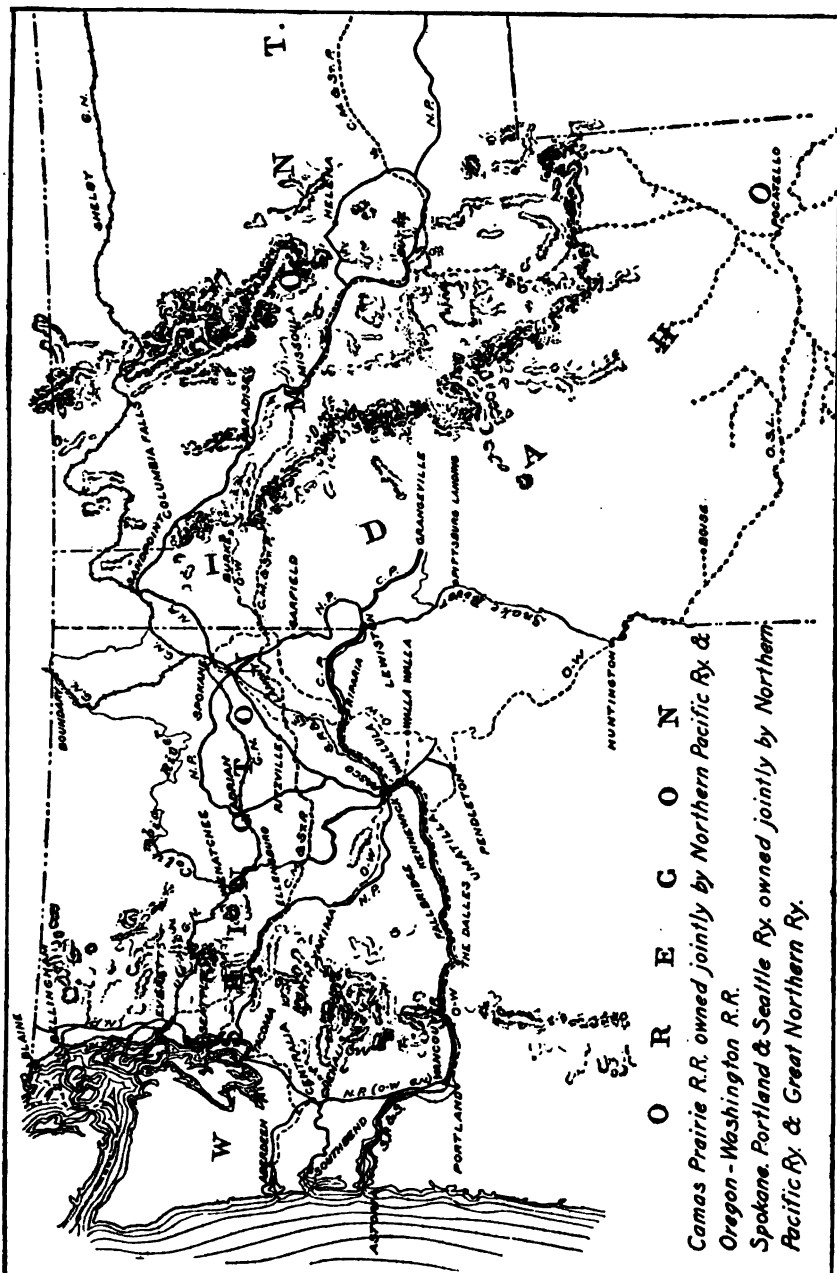
	1	2	3	4	5	A	B	C	D	E
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Astoria-Spokane.....	124	104	84	71.5	60	62.5	50	40	35	30
Seattle-Spokane.....	99	84	69	60.0	50	50.0	40	30	25	20
Difference.....	25	20	15	12.5	10	12.5	10	10	10	10

The excess in the rates from Astoria over those from Seattle represent the local class rates between Astoria and Portland.

The rates between Astoria and inland empire stations are alleged to be unreasonable and to subject that city and its merchants, manufacturers, and shippers to undue prejudice and disadvantage and to result in undue preference and advantage to the ports on

Puget Sound and the Washington coast. It was not seriously contended that the Astoria rates are unreasonable otherwise than relatively, and no material facts with respect to their reasonableness were submitted at the hearing. As we understand the record, the real issue is one of discrimination. In support of this allegation it is contended—(1) that the distance from Astoria to inland empire points is not substantially greater than from the Puget Sound ports; (2) that operating conditions are so greatly in favor of Astoria as to more than overcome the slight disadvantage in mileage; (3) that the cost of the service to and from Astoria is less than to and from Seattle; (4) that the Great Northern and Northern Pacific through stock ownership in the Spokane, Portland & Seattle, the only rail carrier serving Astoria, control the prosperity of the latter line and keep from it business which it would otherwise naturally receive. Although the rates applicable to class freight between Astoria and the inland empire are made by combinations on Portland and the commodity rates are based on certain arbitraries over the Portland rates, and although, as we have already explained, the rates from Portland to the inland empire are the same, broadly speaking, as the rates from Tacoma and Seattle, the complaint does not allege discrimination in favor of Portland but only in favor of the ports in the state of Washington. In this connection it should be mentioned that while the average distance from Astoria to inland empire points is but 45 miles greater than the distance from Seattle, nevertheless from all points in the inland empire Astoria is 100 miles more distant than Portland, the basing point, as just explained, for rates to and from Astoria. As to transcontinental traffic Astoria is a Pacific coast terminal, as stated, and takes the same rates as Portland, Seattle, and Tacoma; and it asks, in substance, that the same rate basis as is now applied on transcontinental traffic shall be made applicable also on traffic to and from the inland empire; in other words, with respect to the latter traffic, the demand is that Astoria shall be put on the same rate basis as Portland, Seattle, and Tacoma.

Before taking up the allegation of discrimination a reference to the plat showing the relative location of the various ports, rail lines, and interior cities with which we are especially concerned here will be helpful. It will be seen, as stated, that but one rail line serves Astoria, the Spokane, Portland & Seattle. As shown by the plat, that line follows the south bank of the Columbia River to Portland, where it crosses the river, following the north bank to a point beyond Kennewick, and thence to Spokane. The Oregon-Washington, which operates a line of boats on the Willamette and Columbia rivers between Portland and Astoria, and publishes through rates to and from the latter point, follows the south bank of the river from Wallula to Portland and proceeds northwardly to Tacoma and Seattle, with a branch line to Aber-



deen. Tacoma and Seattle are reached also by the lines of the Chicago, Milwaukee & St. Paul, the Great Northern, and the Northern Pacific. The lines of the latter carrier extend also to Aberdeen and South Bend, on Grays Harbor and Willapa Harbor, respectively, the former 93 miles and the latter 107 miles from Tacoma, and also to Everett and Bellingham, both on Puget Sound, about 47 miles and 119 miles, respectively, north of Seattle. Everett and Bellingham are served also by the Great Northern. The lines of the Chicago, Milwaukee & St. Paul, which traverse the inland empire, have recently been extended to Everett, Seattle, Tacoma, and Aberdeen. The lines of the Oregon Short Line Railroad Company, hereinafter referred to as the Short Line, traverse the southern portion of Idaho and extend west to Huntington, where they connect with the Oregon-Washington. The rails of the latter carrier extend also to Spokane and points in northern Idaho. It will be observed therefore that Tacoma, Seattle, and Portland are served by the Great Northern, the Northern Pacific, and the Oregon-Washington; the two cities first named are served also by the Chicago, Milwaukee & St. Paul, hereinafter referred to as the Milwaukee; Aberdeen is served by the Northern Pacific, the Milwaukee, and the Oregon-Washington; Everett is reached by the Great Northern, the Northern Pacific, and the Milwaukee, and Bellingham, by the Great Northern and the Northern Pacific; Astoria is served by the Spokane, Portland & Seattle alone, while Spokane is on the rails of all these five lines.

The most westerly of the important competitive points involved in this rate situation are Kennewick and Pendleton, about 327 and 329 miles, respectively, from Astoria; the most easterly points of importance are Missoula and Pocatello, the former 735 miles from Astoria and 656 miles from Seattle, and the latter 831 miles from Astoria and 910 miles from Seattle. The distances between Astoria and points in the inland empire are generally greater than the distances between Seattle and the same points. To and from competitive points over the short lines the average difference in distance is but 45 miles in favor of Seattle, as just stated. To Lewiston the distance from Astoria is 454 miles and from Seattle 392 miles, a difference in distance in favor of the latter point of 62 miles; to Walla Walla, the distance from Astoria and Seattle, respectively, is 343 and 317 miles, a difference in favor of Seattle of 26 miles; to Pendleton the distance is 329 miles from Astoria and 308 miles from Seattle, a difference of 21 miles. The first-class rate between each of these inland empire points just mentioned and Astoria is 25 cents higher than the first-class rate between the same points and Seattle. But the complainant urges, as heretofore stated, that these differences in distance are more than overcome by the favorable operating conditions to and

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from Astoria. To that point the haul is over a practically water level railroad, while from the same points to Seattle the haul is in large part over a route of sharp curves and steep grades across the Cascade Mountains at elevations on the Northern Pacific of 2,784 feet and on the Great Northern of 3,373 feet. Figures intended to prove that the cost of handling traffic over the Astoria route is less than the cost of handling traffic to Puget Sound were also submitted. If both carriers were operated to capacity, the per ton-mile cost of operation of the Spokane, Portland & Seattle would undoubtedly be less than the cost of operation on the Great Northern and Northern Pacific. The latter, however, operates up to about 60 per cent of its capacity, while the Spokane, Portland & Seattle operates only to about 10 per cent of its capacity. Considerable local traffic originates between Spokane and Seattle on the lines of the Great Northern and the Northern Pacific, while the country between Spokane and Portland, on the line of the Spokane, Portland & Seattle, especially west of Kennewick, is at this time largely unproductive. The local traffic of the latter carrier is but 6 per cent of its total traffic. That line, as stated of record, is valued at \$110,000 per mile, as against a valuation of \$79,000 per mile for the Northern Pacific. There is not of record sufficient evidence to determine the relative cost of service on the Spokane, Portland & Seattle and the northern lines, and even if this information were available it would not, of course, be controlling.

In justification of the present rate structure the defendants contend that the lower rates to the Puget Sound ports result in no unlawful discrimination against Astoria, for the reason that conditions entirely beyond their control forced the Puget Sound rates to an equality with the Portland rates, and that, as Astoria is 100 miles farther from the inland empire than Portland, it would be unfair to place these two points on the same rate basis. To extend to Astoria the same rates as Seattle and Tacoma now enjoy would, it is claimed, result in a demand by Portland for rate reductions based on its shorter haul; reductions in the Portland rate would call for similar reductions in the Seattle and Tacoma rates, and the final result would be, as the defendants contend, to place the general rate relation again in its present situation. It should here be stated that while at the time the Seattle and Tacoma rates were first established there was no rail line to Astoria, the lines which now publish rates to and from those points, as well as other Puget Sound points, reach Astoria either directly or through their connections, the Spokane, Portland & Seattle directly, the Northern Pacific and Great Northern over the rails of the Spokane, Portland & Seattle, which they jointly own, and the Oregon-Washington by means of its water

line from Portland. At the present time these lines participate in traffic between Astoria and the inland empire and are parties to tariffs naming rates with respect to which unlawful discrimination is alleged. The Spokane, Portland & Seattle is a party to and participates in rates to and from Aberdeen and South Bend, as well as to and from Astoria. It is also a party to and participates in joint class and commodity rates, in connection with the Northern Pacific between Seattle and points local to its line east of Pasco, which are lower than the class and commodity rates between Astoria and the same points. The first-class rate between Seattle and Lamont is 99 cents, while between Astoria and the same station the rate is \$1.24. Out of these joint rates the division accruing to the Spokane, Portland & Seattle is based on the short haul of 105 miles between Pasco and Lamont; on Astoria traffic that line would receive the entire revenue on a haul of 435 miles.

To a large extent also the defendants rely upon *Farmers' Cooperative & Educational Union v. G. N. Ry. Co.*, 17 I. C. C., 406, involving the reasonableness of the rates on grain and grain products from points in Washington and Idaho to Astoria, to which point the rates were then 10 cents higher than to Portland, Seattle, and Tacoma. Our finding in that proceeding was that the rates to Astoria were unreasonable in themselves and for the future should not exceed the rates to Portland by more than 4½ cents per 100 pounds. The question here presented is much broader than the one disposed of on that record, and during the five years that have elapsed since that case was decided certain changes, which the complainant regards as of more or less importance, have taken place. The record shows that the Chicago, Milwaukee & St. Paul has since extended its lines from the east through the inland empire to Seattle and Tacoma; the Oregon-Washington Railroad & Navigation Company now reaches the latter points by joint trackage arrangements with the Northern Pacific. The federal government is constructing extensive works at the mouth of the Columbia River with a view to maintaining a channel with 40 feet of water at low tide, and \$500,000 has been appropriated for this purpose by the ports of Portland and Astoria; the city of Astoria is engaged in the construction of a public dock with a water frontage of 2,500 feet, and is making other improvements estimated to cost \$1,000,000, which when completed will accommodate the largest ocean vessels. At this time such steamers do not ascend the river to Portland, notwithstanding the existing lower terminal rates in effect to and from that point. Nor do they stop at Astoria, notwithstanding the fact that it has a fine harbor and excellent dock facilities. Because of the higher rail rates prevailing to and from Astoria the steamships as a rule continue to the Puget Sound ports where lower rail rates are in effect. The record

tends, however, to show that if Astoria be given terminal rates the ocean lines would stop their steamships there. The harbor at Astoria embraces an area of 12 square miles available for anchorage, and has a depth of water that puts it on an equality with the great harbors of the country.

The entire capital stock of the Spokane, Portland & Seattle is owned in equal parts by the Great Northern and the Northern Pacific. It is contended by the complainant that as a result of this joint ownership the parent companies have diverted over their own rails to the Puget Sound ports traffic which naturally would move to and from Astoria over the rails of the Spokane, Portland & Seattle. However this may be, it is clear that the paramount question presented of record is whether the Great Northern and the Northern Pacific, being responsible for granting terminal rates to Seattle and Tacoma, unduly prefer those points and unjustly discriminate against Astoria when they refuse to extend terminal rates also to Astoria.

On shipments moving between Astoria and the inland empire the rates are made by combination on Portland, as heretofore stated. This is true with the exception only of grain, lumber and lumber products, and salt, as to which the Astoria rates are certain arbitraries over the Portland rates. Under the case last cited the grain rates from competitive territory to Astoria are 4.5 cents per 100 pounds higher than from the same territory to Seattle and Tacoma; from Spokane to Seattle, for a haul of 339 miles, the rate on grain is 17 cents, this being the rate also to Tacoma for a haul of 378 miles. To Astoria, a distance of 468 miles, the rate is 21.5 cents. The rate to Aberdeen, 470 miles from Spokane, is 19.5 cents, the same rate being applicable also to South Bend, for a haul of 479 miles. In other words, because of its longer haul by 129 miles, Astoria pays, on grain, 4.5 cents per 100 pounds in excess of the Seattle rates; while Aberdeen, with a haul 131 miles in excess of the haul to Seattle, pays only 2.5 cents more than Seattle. At the same time Astoria, with a haul from Spokane 2 miles shorter than to Aberdeen, pays 21.5 cents, while the rate to Aberdeen is 19.5 cents.

On lumber and lumber products the rates from Aberdeen and South Bend to competitive territory are the same as from Seattle and Tacoma; the Astoria rates are from 2.5 cents to 7.5 cents per 100 pounds higher. Mills at and in the vicinity of Astoria manufacture lumber in large quantities in competition with the mills on Puget Sound and on the Washington coast, including Aberdeen and South Bend. From Astoria to Lewiston, in the state of Idaho, a distance of 456 miles, the lumber rate is 22.5 cents; from Aberdeen to Lewiston, 480 miles over the Northern Pacific, and 501 miles by way of the Oregon-Washington, the lumber rate by both routes is 20 cents.

The same rate applies over the Northern Pacific from Seattle and Tacoma. In discussing the lumber rates from Aberdeen and South Bend, the defendants in their brief make the following statement:

If, as claimed by one of complainant's witnesses, mills at and near Astoria have lost and are losing to Aberdeen mills orders from inland empire territory because of the abnormally low rates on lumber enjoyed by Aberdeen, the situation is one requiring correction, and the Spokane, Portland & Seattle Company, in sore need of increased revenues as it is, is most interested in bringing about that correction. The Spokane, Portland & Seattle Railway Company welcome any fair change which will develop industries on its line and enlarge its operating revenues. * * * On the other hand, if Aberdeen and South Bend mills are to continue to enjoy these abnormally low lumber rates, the Spokane, Portland & Seattle Company certainly would not oppose reductions to Astoria mills if the reductions would, in fact, result in sufficiently increased business to offset the effect of lower rates.

It would seem to be conceded that the maintenance of lower rates on lumber from Aberdeen and South Bend than from Astoria can not be successfully defended. This would seem to be equally true with respect to the grain rates to those points. On sash, doors, and blinds the rate to Lewiston, Wallula, Walla Walla, and Spokane from Seattle, Tacoma, and the Washington coast ports is 30 cents, while to the same points from Astoria the rate is 37.5 cents. On salt Astoria's arbitrary over Portland is 7.5 cents. On traffic moving under combination rates the differences in favor of Seattle and Tacoma are considerably greater. On bags and bagging the Astoria rates are 12.5 cents per 100 pounds higher than the Seattle rates; on sugar, canned goods, iron and steel articles, cement, and petroleum oil the Astoria rates are 10 cents higher. These examples are illustrative of the general relation of the commodity rates from and to competitive territory. As heretofore stated, on class traffic between Astoria and the inland empire the rates are made by combination on Portland.

It has long been a settled doctrine in this Commission that the mere maintenance of higher rates to one point than to another is not an unjust discrimination within the meaning of the act; it is only when the general conditions of transportation and the general circumstances surrounding the traffic are substantially similar and such a rate relationship adversely affects the commerce of one point and thereby materially benefits the commerce of the other point that it may be said to involve the preferences and discriminations prohibited by law as between different communities served by the same carriers. What is the real situation in this respect as shown upon the record before us here?

The rates of all the north Pacific ports are based on the Portland rates. Portland, if not the oldest, is one of the oldest of the north coast settlements. It was officially a port of entry even before it was reached by a railroad. It was the first of the north Pacific coast ports to have

railroad connections with the transcontinental territory, and until some time after the rails of the Oregon Railroad & Navigation Company had reached Portland there was no other transcontinental route to the north coast. The Portland rates were therefore the first rates established to a north Pacific port. Later when the Northern Pacific and the Great Northern entered Seattle and Tacoma they adopted the policy of giving those points rates that were no higher than the prevailing rates to and from Portland. That course was forced upon the northern lines in order that they might secure a share of the inland empire traffic; this has been their rate policy now for more than 20 years; and that relationship is the established basis of rates on the four transcontinental railroads that now serve Seattle and Tacoma. Under this rate policy Seattle and Tacoma have become the great terminals in the state of Washington and Portland the great terminal in the state of Oregon. Astoria, with its fine harbor and facilities, has grown also, but it has not become a great port and terminal in comparison with Portland, Seattle, and Tacoma. Large investments in terminal facilities have been made by the different carriers reaching these three points, and substantial expenditures of public funds have been made in improving the water fronts and harbors so that the traffic might readily be handled. Large sums have been expended by the national government at Astoria also. The municipal government and private interests have likewise invested substantially in developing its facilities. But, as we have said, the steamships do not regularly stop at Astoria, and the record shows that they will not stop there so long as lower rail rates are available to and from other ports on the north Pacific coast. Apparently, therefore, Astoria can not develop into a great port while this rate relationship continues, and the general geographic relationship of the three ports to the inland empire makes it clear that Astoria is being subjected to an unlawful rate burden in its competition with the Puget Sound ports for that traffic unless the lower rates to the latter ports grow out of and rest upon a substantial difference in the conditions surrounding their traffic.

Astoria has rested its case on a comparison of its distances and transportation conditions with the distances of Seattle and Tacoma from the inland empire and with the conditions surrounding their traffic to and from inland empire points. Astoria has refrained, however, from making any comparison of its rates and the circumstances and conditions surrounding its traffic with the inland empire and the rates of Portland and the circumstances and conditions surrounding the traffic between that point and inland empire points. The hearings in this proceeding were held at Portland, and it may properly be assumed that Portland was aware of the pendency of the contest and its possible consequence to her, yet it is to be noted

that Portland has not intervened upon the record and has taken no part in the hearings. Under such circumstances it does not seem unduly venturesome to assume that this inactivity on Portland's part indicates no lack of interest in Astoria's complaint, but rather, as the defendants anticipate and conjecture, a purpose on the part of Portland, in case of a reduction in the Astoria rates to the basis of the rates to the Puget Sound ports, to call our attention at a later date to its advantage, over Astoria, of 100 miles in the distance from inland empire points, and to predicate upon that fact a demand for a corresponding reduction in its own rates. It is obvious, however, that there is something of a natural relationship in the rates of Seattle, Tacoma, Astoria, and Portland that can not be ignored, and a reduction in the Portland rate to and from the inland empire does not necessarily follow as an inevitable consequence of a reduction in the Astoria rates to the basis of the Seattle and Tacoma rates.

While Astoria is not fairly to be criticized for presenting its case solely upon its relation to the Puget Sound ports, the record emphasizes our own duty in the premises, namely, to consider the entire rate situation and the influence that our action here may have upon other points not represented in the proceeding or especially touched upon in the record.

As before stated, Astoria now takes terminal rates on class and commodity traffic to and from points east of the line drawn from Buford to Trinidad. Its rate disadvantage as compared with Seattle and Tacoma commences on traffic to and from the inland empire. Considered solely in its relation to Seattle and Tacoma, it would be difficult upon the record before us to advance any sound reason for holding that the Astoria rates, to and from the inland empire as a whole, should be higher than the rates in effect at the same time at those two ports. The fact that those ports are reached by four trans-continental lines, while Astoria is reached by but one, is not sufficient, standing alone, to justify the present rate disadvantage of Astoria. The operating conditions to Astoria, especially west of Kennewick, as we have already explained, are shown of record to be materially more favorable than the operating conditions to Seattle and Tacoma, the traffic of the defendants to those points being carried over the Cascade Mountains. On the other hand, if Astoria be considered solely in its relation to Portland, it would seem that Astoria might fairly take rates from the inland empire, again considered as a whole, that are somewhat higher because of the additional haul of 100 miles; and this view was expressed in *Farmers' Cooperative & Educational Union v. G. N. Ry. Co.*, *supra*. When the entire situation, as it appears from the record, is carefully analyzed the more important question that emerges is whether the fact that the northern carriers were forced by the competition of Portland as a port and terminal,

to give to Seattle and Tacoma the same rates as to Portland, justifies either the carriers or this Commission in disregarding the effect upon Astoria of the competition of Tacoma and Seattle with their lower rates, even though they may be compelled rates. On that question it will suffice to say that in recognizing the effect of Portland's competition on Tacoma and Seattle the carriers may not lawfully overlook the effect of the competition of Seattle and Tacoma upon Astoria as a port and harbor.

A careful examination of the record makes it clear that these north Pacific coast ports have a closer geographic and economic relation one to the other than is at this time reflected in the tariffs of the defendant carriers and that the latter in their present rate adjustment unduly discriminate against Astoria and unduly prefer the Puget Sound ports. We also conclude and find from the record that there is such a relationship between Seattle, Tacoma, Astoria, and Portland as to require them to be considered as forming more or less of a natural rate group with respect to much of the traffic in question.

All the facts adduced of record being fully considered, we have reached the conclusion, and so find, that between Astoria and all points in this territory on or east of the line of the Northern Pacific, extending from Pendleton, in the state of Oregon, through Pasco and Kennewick to Spokane, all in the state of Washington, and on or east of the line of the Great Northern, extending from Spokane northward, the rates should not exceed the rates at the same time maintained between Seattle, Tacoma, and Portland, and such points; between Astoria and points on the Oregon-Washington east of Pendleton, and points on the Oregon Short Line the rates should not exceed the rates at the same time maintained between Seattle and Tacoma and such points; as to points north of Kennewick and west of the competitive territory just described the Astoria rates may exceed the Portland rates in the same amount that the Portland rates are higher than the Seattle and Tacoma rates provided the arbitraries over Portland shall in no case exceed the local rate between Portland and Astoria; as to stations on the Oregon-Washington Railroad & Navigation Company and stations on the Spokane, Portland & Seattle, west of Pendleton and east of the Cascade Mountains, the Astoria rates may exceed the Portland rates by the same amount that the Seattle and Tacoma rates are higher than the Portland rates, the differentials over Portland in no case to exceed the local rate between Portland and Astoria.

An order to this effect will accordingly be entered. It is scarcely necessary to state that our conclusions and order cover only interstate rates.

33 I. C. C.

No. 7537.

CHELSEA REFINING COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL

Submitted September 7, 1915. Decided January 20, 1916.

Charges collected for the transportation of petroleum fuel oil in carloads from Chelsea, Okla., to Mears Mine, Mo., found to have been in excess of the amount lawfully due.

J. S. Burchmore and L. E. Moore for complainant.

Thomas Bond, H. G. Herbel, and F. G. Wright for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*.

During the period from May 26, 1911, to July 8, 1911, there were shipped from the plant of the complainant at Chelsea, in the state of Oklahoma, billed to the Mascot Mining Company at Granby, in the state of Missouri, 13 carloads of petroleum fuel oil in tank cars. The plant of the consignee, however, is not at Granby, but at Mears Mine, a local station on the line of the Missouri Pacific, 2 miles beyond Granby. The shipments moved to Mears Mine through Granby by the St. Louis & San Francisco, hereinafter called the Frisco, in connection with the Missouri Pacific Railway, and the charges collected aggregated 17 cents per 100 pounds, based on the Frisco's commodity rate of 10 cents to Granby and the Missouri Pacific's fifth-class distance rate of 7 cents beyond. The complainant contends that the haul from Granby to Mears Mine was merely a switch movement for which the tariff of the Frisco named a charge of \$3 a car by the Missouri Pacific, which the Frisco was to absorb. The tariffs of the Frisco relating to switching at local and junction points on its line also provided under item 5 as follows:

The rates opposite industries located on foreign lines are the charges or portions of charges assessed by those lines for switching between such industries and connections with the St. Louis & San Francisco * * *, which the latter companies will absorb * * *.

Another item provided for the absorption of switching charges at destination on competitive traffic and designated petroleum oil as competitive, whether originating at local or junction points. The Mascot Mining Company was included in a list of industries described in the tariff as being located on the rails of the Missouri

Pacific at Granby and switching charges to the plant of \$3 a car were also shown. The Missouri Pacific, however, was not a party to this tariff, its own tariffs naming Mears Mine as a separate station and specifically providing for the application thereto of road-haul rates from Granby. The evidence shows that traffic between the two points is handled by road crews under dispatcher's orders and that this portion of the through movement is essentially a road-haul movement.

The record shows also that the Frisco tariff, which became effective on January 8, 1911, and which provided for the absorption of a switching charge by the Missouri Pacific of \$8 at Granby, was published by the Frisco under a misapprehension, the proper officials of the two lines not having agreed thereto. The error was corrected on August 2, 1911, by the cancellation from the Frisco's tariff of the Mascot Mining Company from the list of industries at Granby. The complainant does not deny that the plant of the consignee is at Mears Mine or that it is a separate station, no mention of which is made in the tariffs of the Frisco. Nor is it contended that any tariff of the Missouri Pacific provided for a switching charge of \$3 between Granby and Mears Mine.

In support of the contention that the rate charged was unreasonable the complainant compared the rate between Granby and Mears Mine with the rate from Chelsea to Granby, and also with the rate on similar traffic from Chelsea to Kansas City. The comparisons offered, however, are general in character and insufficient to support a finding that the rate charged was unreasonable.

In several cases we have awarded reparation on account of errors in tariff publications and have held solely responsible the carrier by which the error was made. To hold that a shipper must look beyond the tariffs of the carrier that is offering him a service in order to ascertain whether specific statements in those tariffs with respect to the charges of its connections are correct, would be to put the shipper under a harsh and onerous obligation which we have never held to rest upon him. On the contrary, we have held it to be the carrier's duty in publishing its tariffs to see that they are correct, and this is no less its obligation when it undertakes specifically to show the charges of its connections which it proposes to absorb under its own rates. When the shipper here ascertained from the Frisco's tariffs that the latter offered a 10-cent rate from Chelsea with delivery at the plant of the mining company, and the tariff affirmatively indicated that the Missouri Pacific switching charge was \$3, which amount the Frisco would absorb, he had the right to contract with the Frisco for such a service on that basis; and the Frisco by its own duly published tariffs was put under the obligation of performing the service for him at that charge.

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In thus holding we are not to be understood as indicating that the Missouri Pacific under such circumstances may accept from the Frisco what the latter line has published as the Missouri Pacific's charge for the service, or that it may lawfully accept from the Frisco any less than its own lawfully published charge. The conclusions reached herein are fully supported by item 68 of Tariff Circular 18-A, and by *De Camp Bros. v. V. & S. W. Ry. Co.*, 22 I. C. C., 274; and *Edison Portland Cement Co. v. D., L. & W. R. R. Co.*, 22 I. C. C., 382.

Upon the facts shown of record we conclude and find that, although the rate situation here considered was due to an error in the tariffs of the Frisco, the shipper was nevertheless overcharged in so far as the rate assessed on his shipments exceeded 10 cents per 100 pounds. And this overcharge the Frisco will be expected promptly to refund.

38 I. C. C.

No. 7945.

ADVANCE BEDDING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

FOURTH SECTION APPLICATIONS Nos. 165, 461, AND 464.

Submitted September 3, 1915. Decided January 21, 1916.

Reparation denied on shipments of cotton linters from certain points in Oklahoma and Texas to La Crosse, Wis. Complaint dismissed.

S. J. Bolton for complainant.

R. H. Widdicombe for Chicago & North Western Railway Company.

K. F. Burgess for Chicago, Burlington & Quincy Railroad Company.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of mattresses at La Crosse, Wis. By complaint, filed April 21, 1915, it alleges that the carload and any-quantity rates charged by defendants for the transportation of cotton linters from designated points in Oklahoma and Texas to La Crosse are unreasonable and unjustly discriminatory; also that the rates are violative of the provisions of the fourth section of the act in that they exceed the rates on cotton linters from the same points of origin to St. Paul and Minneapolis, Minn., by way of La Crosse, and in that the rates from certain of the points of origin to La Crosse exceed the aggregates of the intermediate rates to and from St. Louis, Mo., and Rock Island, Ill. Reparation is asked. Fourth section applications covering the departures alleged were heard with the complaint.

All of the rates proposed by complainant have been established since the complaint was filed. None of them exceeds the corresponding rates to St. Paul and Minneapolis, and all fourth section departures involved have thus been eliminated, leaving only the question of reparation for decision.

Each of the shipments on which reparation is asked was bought on the basis of delivery at destination and was forwarded "order, notify." The freight charges were paid by complainant, but were allowed on the face of the invoice and were deducted from the delivered purchase price. Therefore, as complainant did not bear the charges for the transportation it is not, and would not be, entitled to an award of reparation, even if the rates assailed were shown to be unreasonable or discriminatory. *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302. The complaint accordingly will be dismissed.

88 I. C. C.

No. 7490.

CORPORATION COMMISSION OF OKLAHOMA ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 1, 1915. Decided January 21, 1916.

At the present time the Santa Fe, which serves with its own rails the wheat fields of Oklahoma and the port of Galveston, Tex., does not participate with its connections in through routes and joint rates on wheat moving to Louisiana ports for export. Traffic to those ports involves a haul over two or more lines. Upon the facts shown of record the Santa Fe lines are directed to establish from producing points thereon in the wheat fields of Oklahoma through routes and joint rates to New Orleans, La., that shall not exceed by more than 5 cents per 100 pounds the rates in effect at the same time from the same points of origin to Galveston, Tex.

G. A. Henshaw for Corporation Commission of Oklahoma.

C. F. Prouty for Oklahoma Grain Dealers Association.

Frank Foltz for Oklahoma Millers Association.

W. V. Hardie for Oklahoma Traffic Association.

Robert Dunlap, T. J. Norton, and J. L. Coleman for Santa Fe lines.

H. H. Haines for Galveston Commercial Association, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Corporation Commission of Oklahoma, the Oklahoma Grain Dealers Association, and the Oklahoma Millers Association, the two latter being voluntary associations representing the local commercial interests indicated by their titles. Complainants have headquarters at Oklahoma City. By complaint, filed November 18, 1914, they ask for through routes and joint rates on wheat for export from stations in Oklahoma on the lines of the Atchison, Topeka & Santa Fe Railway and the Gulf, Colorado & Santa Fe Railway, hereinafter referred to as the Santa Fe lines, to New Orleans and other Louisiana Gulf ports which shall not be higher than the present rates from the same stations to Galveston, Tex. The principal defendants are willing to establish joint rates on grain, for export, from the points named to Louisiana Gulf ports, viz, New Orleans, Algiers, Port Chalmette, and Westwego, and the single question for our determination is whether the rates to be established should be the same as the rates concurrently maintained from

the same points of origin to Galveston, or whether they should exceed the rates to Galveston. The Galveston Commercial Association intervened in opposition to the complaint.

Complainants contend that they are entitled to rates to New Orleans no higher than the rates maintained by the Santa Fe lines to Galveston because these rates to Galveston are sufficiently high to be extended to the port of New Orleans, and because grain dealers located on the lines of other carriers in the same general territory of origin have rates to Galveston and to New Orleans, for export, that are substantially the same, and that are no higher than the corresponding rates maintained by the Santa Fe lines to Galveston. The Santa Fe lines desire to retain the export wheat traffic originating on their rails for themselves and for the port of Galveston. To this end they urge that their average haul from the points involved to Galveston is 600 miles, whereas the hauls to New Orleans average about 200 miles more and are two or three line hauls. For these reasons they insist that joint rates to New Orleans should be somewhat higher than the rates from the same points to Galveston.

The record shows that 20,000,000 bushels of wheat were raised in Oklahoma in 1912, 17,500,000 bushels in 1913, 46,500,000 bushels in 1914, and that the output during the past year was expected to amount to 60,000,000 bushels. Most of the output is produced in the northern and western tiers of counties. The Santa Fe lines serve a considerable portion of the wheat-producing area, which is also well served by other roads. The geographical location of Oklahoma compels the movement of the greater part of its wheat to ports on the Gulf of Mexico, for export.

The Santa Fe lines maintained longer embargoes on wheat for export through Galveston than were maintained by any other carrier reaching the Gulf either at Galveston or at New Orleans. The Santa Fe lines' first embargo on wheat for export through Galveston was laid in the latter part of July, 1914, before war had been declared in Europe. At that time more than 5,200 cars loaded with wheat for export, about one-fifth of the available box-car equipment of the Santa Fe lines, were detained under load along their lines. On August 7 nearly 4,500 cars were still detained under load. When the embargo was lifted, September 22, there were more than 1,300 cars still to be unloaded. The second embargo was laid October 24, when more than 4,300 cars, approximately one-sixth of the Santa Fe lines' available car equipment, were under load. The second embargo was lifted November 30, when more than 1,400 cars were waiting for ship side. The third embargo was laid December 11, 1914, when 3,800 cars of export wheat were strung out along their lines from Galveston to interior points. The third embargo was not lifted until January 14,

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1915, when more than 1,950 cars of wheat for export awaited transshipment. In the early part of the month of March the Santa Fe lines had more than 2,000 cars still under load with wheat for export. The record does not show the numbers of cars under load during the same periods on the various other lines from Oklahoma to Galveston and New Orleans, but does show that no other carrier serving either Galveston or New Orleans maintained an embargo or embargoes at either place for as long a period or periods as the Santa Fe lines maintained at Galveston. The Santa Fe lines endeavored to show at the hearing that their embargoes were not due to any fault of theirs or to the facilities at Galveston, but to the unprecedented size of the wheat crop in Oklahoma and possibly in other states, and to the shortage of ship tonnage at Galveston. In any event it appears that during the past season Galveston loaded 5,000,000 bushels of wheat in excess of the amount of wheat loaded at New Orleans, and that the Santa Fe lines handled approximately one-half of all the wheat moved to Galveston between June 1, 1914, and February 1, 1915. Oklahoma shippers at stations on the Santa Fe lines shipped all the wheat they could during the past season to Kansas City and Chicago. The higher combination rates applicable, ranging from about 5 to 13 cents more than the joint rates to Galveston, prevented shipment to New Orleans. In many instances farmers and other shippers drayed their wheat across country and shipped it over lines that maintained the same, or approximately the same, rates to Galveston and to New Orleans. The Santa Fe lines lost many carloads of wheat in consequence.

The record contains evidence of the relative capacities of the elevators at Galveston and at New Orleans and the relative facilities for the examination and handling of grain at the two ports; also of the ordinary excellence of the service rendered by the Santa Fe lines and the absence of substantial damage to the shippers from the embargoes described because of a general upward trend in prices paid for wheat.

The Santa Fe lines publish rates on wheat to Galveston, for export, from 193 stations in Oklahoma. The rates published range from 19.7 cents from points near the Texas state line to 26.2 cents from more distant points. From 156 of these stations the rate is 25.2 cents. The average of all of the rates published is about 25 cents. The rates from the same stations to New Orleans were higher in every instance, as they were made by the combination of the local rates of the Santa Fe lines to the junction points of other lines with the rates beyond the junction points which were the same to Galveston and to New Orleans. No shipments were made to New Orleans at these combination rates.

Examination of the tariffs, filed by other carriers discloses that export wheat may move from many stations in Oklahoma on the same rate to Galveston, New Orleans, and Mobile. None of these carriers, however, with the exception of the Missouri, Kansas & Texas system, reaches either port with its own rails. From 24 points on the St. Louis & San Francisco Railroad in Oklahoma south of Oklahoma City the rates to Galveston, Mobile, and New Orleans were 25.2 cents. The Santa Fe lines concur in these rates and participate in the haul. By special concurrence the Santa Fe has authorized the St. Louis & San Francisco to continue equal rates to Mobile, New Orleans, and Galveston from 13 stations on the line of the former Oklahoma Central Railway, now the Chicasha-Lehigh branch of the Santa Fe, and from 8 stations on the same branch to New Orleans and Galveston. None of these rates is higher than 25.2 cents per 100 pounds. Effective August 1, 1914, the Atchison, Topeka & Santa Fe Railway Company adopted all tariff actions of the Oklahoma Central Railway and made them its own. From Santa Fe stations in Oklahoma equal or nearly equal export rates are maintained to New Orleans and Galveston on cotton and other commodities.

The complaint in this case, however, alleges no discrimination against complainants, and the record establishes no such violation of the act, by reason of the rate situations stated in the preceding paragraph. Neither the voluntary joinder by the Santa Fe in certain rates to New Orleans substantially equal to its own to Galveston, to enable it to participate in business originating on a foreign line, nor its adoption of the existing tariffs of the Oklahoma Central when the latter became part of its system, no discriminations being shown to result, would make necessary an extension of rate equality to all Santa Fe points of origin. The question is merely one of reasonable rates to New Orleans. While the rates to Galveston, which are not involved, probably afford the Santa Fe lines a fair return, they do not upon this record appear to us to be the maximum rates which reasonably could be applied for the greater mileage to New Orleans and with the participation of additional carriers in the haul. In *Rates on Cotton and Cotton Linters*, 23 I. C. C., 404, we approved increased rates on cotton from Texas points to New Orleans higher than the rates from the same points of origin to Galveston, although theretofore on a parity to the two ports, the distance and service to New Orleans being substantially greater. But it is quite clear, we think, that the present rates on grain from the Oklahoma stations involved to New Orleans are excessive and unreasonable, and that reasonable rates could not greatly exceed the rates from the same points of origin to Galveston. Under the circumstances and conditions disclosed, we are of opinion that upon a reasonable basis the difference should in no case exceed 5 cents per 100 pounds.

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Upon all of the facts of record, we find that complainants are entitled to through routes and joint rates on wheat for export from points on the lines of the Santa Fe in Oklahoma to New Orleans, Algiers, Port Chalmette, and Westwego, La., which shall not exceed by more than 5 cents per 100 pounds the rates contemporaneously maintained from the same points of origin to Galveston.

The record indicates that the parties had in mind routes via Fort Worth, Tex., and the Texas & Pacific Railway; via Beaumont, Tex., and the lines of the Texas & New Orleans Railroad and Morgan's Louisiana & Texas Railroad & Steamship Company, and via other junctions and lines beyond. Some of the lines contemplated are named as parties defendant but some are not. Proper defendants are named to provide for rates through Fort Worth, Dallas, and Beaumont, Tex., and through Shreveport, La., to Louisiana ports.

An appropriate order will be entered.

38 I. C. C.

No. 7000.

A. L. GREENBURG IRON COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted March 2, 1915. Decided January 24, 1916.

Rates on galvanized corrugated sheet-steel culverts in carloads from Terre Haute, Ind., to Texas points not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

F. A. Larish for complainant.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of road machinery, steel bridges, and corrugated culverts at Terre Haute, Ind. By complaint, filed June 12, 1914, it alleges that the charges collected by defendants for the transportation of certain carloads of galvanized corrugated sheet-steel culverts from Terre Haute to Texas points during 1912 and 1913 were unreasonable and unjustly discriminatory. Reparation is asked.

No commodity rates applied. The western classification, which governed the movement, rated corrugated sheet-steel culverts, in carloads, minimum weight 20,000 pounds, fourth class. The fourth-class rate was \$1.06 per 100 pounds. A commodity rate of 69 cents per 100 pounds, minimum weight 36,000 pounds, applied and still applies on sheet-iron pipe 30 inches or less in diameter. Complainant contends that the rate on sheet-iron pipe was applicable to the shipments involved; that the charges on corrugated sheet-steel culverts should not reasonably exceed the charges on sheet-iron pipe, but that the class rates should be charged where lower charges result.

The shipments made by the complainant were culverts and not merely sheet-iron pipe; in any event the commodity rate on sheet-iron pipe would not have been applicable, as some of the culverts shipped were as much as 84 inches in diameter.

Complainant shows that galvanized corrugated sheet-steel culverts range from 8 inches to 84 inches in diameter and from 16 feet to 24 feet in length; that they can be carried in box, flat, coal, or gondola cars; that sometimes they are loaded three or four deep by nesting

the smaller culverts within the larger culverts; and that they load to 42,000 pounds when long cars are used. The rates to Texas common points on culverts are compared with rates on other commodities of greater value and less susceptibility to damage. The testimony of both complainant and defendants shows that the conditions of transportation surrounding the movement of culverts and the sheet-iron or sheet-steel pipe covered by the commodity rate are virtually identical. But the current rating on culverts was approved in *Klawer Mfg. Co. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 508. The record in that case was comprehensive, and the facts adduced in the record now before us do not warrant a change in our conclusions. The existence of a commodity rate on sheet-steel pipe, which, if it could be applied, would in some cases result in lower charges on culverts does not afford a sufficient basis for the establishment of a similar commodity rate on culverts. The commodity rate on sheet-steel pipe is not shown to injure complainant.

We find that the rates assailed are not shown to be unreasonable or unjustly discriminatory, and the complaint will be dismissed.

HALL, *Commissioner*, dissents.

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No. 5922.
MITCHELL COAL & COKE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted December 18, 1914. Decided January 24, 1916.

1. The service over private tracks from the mines and coke ovens of shippers to the rails of the carrier is neither compelled nor prohibited by statute or at common law; but whichever course the carrier pursues the statutory inhibition of unjust discrimination and unreasonable preference or advantage must be observed.
2. When the carrier employs a shipper to perform this service for it, if the compensation is excessive, the shipper obtains an unreasonable preference and advantage in violation of the regulating statute.
3. The allowance paid by the defendant here to the competitors of the complainant was unreasonable and unlawful to the extent that it exceeded 8 cents per ton.

Joseph Giffillan for complainant.

F. I. Gowen for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This proceeding is before us in consequence of the decision and direction of the Supreme Court of the United States in an action begun against the defendant here by the Mitchell Coal & Coke Company in the federal court for the eastern district of Pennsylvania to recover damages because of alleged unlawful rebates and preferential rates accorded by the defendant carrier to competing shippers of coal and coke during the period from April 1, 1897, to May 1, 1901. The cause of action was the payment to certain competing shippers of allowances that were alleged by the complainant to have constituted an unlawful preference and rebate, and by the defendant to have been payments for actual and necessary transportation services performed by the shippers in the defendant's behalf. The case finally reached the court of last resort, where it was held that it should be dismissed, as to certain features, on the ground that it was the function of this Commission, and not of the court, to decide the administrative questions involved. The court, however, upon its own motion stayed the order of dismissal to give the complainant "a reasonable opportunity within which to apply to the Commission for a ruling as to the reasonableness of the practice and the allowance involved." *Mitchell Coal Co. v. Penna. R. R. Co.*, 230 U. S., 247, 267.

For the purpose of obtaining a clearer understanding of the issues, we shall first discuss the facts leading up to the filing of the suit as they appear of record in the Supreme Court of the United States, a transcript of which was filed in this proceeding.

During the period immediately preceding the action coal and coke operations were being conducted in the state of Pennsylvania by the Mitchell Coal & Coke Company, the Altoona Coal & Coke Company, the Glen White Coal & Lumber Company, and the Millwood Coal & Coke Company in the Clearfield coal district; and by the Bolivar Coal & Coke Company and the Latrobe Coal & Coke Company in the Latrobe coal district. All these operations were reached from the rails of the defendant carrier by spur tracks ranging in length from one-third of a mile to 5 miles. The spur leading to the Bolivar mine was owned by the defendant railroad company, all the others being owned by the several coal companies. These coal and coke shippers, with the exception of the Bolivar and Latrobe companies, moved their products from the mines and coke ovens to the rails of the defendant carrier with their own power.

The Mitchell Coal & Coke Company, here complainant, owned and operated several mines and collieries on the line of the defendant in the Clearfield district. Its Gallitzin colliery, the one directly involved in this proceeding, was located approximately 1 mile from the main line of the defendant. Although the practice of paying allowances to shippers for services performed by them, between their operations and the defendant carrier's rails, was in effect prior to the year 1890, it is alleged that the officers of the complainant had no knowledge of that fact until 1898. Before the period of the action and until 1899 the defendant carrier moved the coals of the complainant from the Gallitzin colliery to its main line. Being informed that competing coal companies were performing the service for themselves and were receiving from the defendant carrier 10 cents per ton therefor, the complainant, in October, 1899, and for the sole purpose of receiving a similar allowance, installed a locomotive at its Gallitzin mine, and thereafter continued to perform all the service incident to moving the loaded and empty cars between its mine and the main-line junction. The defendant, however, declined to pay allowances on the ground that it was itself prepared to perform the service, although, because of operating conditions, it could not do so economically at the Altoona, Glen White, and Millwood mines. An offer by the complainant to perform the service for 5 cents per ton was likewise declined.

The mines of the Altoona company were located at Kittanning, distant between 4 and 5 miles from the main line of the defendant. The mine opening was at an elevation of 800 feet above the point of connection between the main line and the spur track,

and in order to reach that elevation a connecting spur was constructed with three switchbacks and a maximum gradient of 4 per cent. For hauling the coal and coke to its rails the defendant for many years paid the Altoona company, on traffic destined to points on the Hollidaysburg branch, an allowance of 13 cents on coal and 10 cents on coke. On coal and coke destined to points east of Altoona the allowance was 18 cents and 20 cents, respectively. On January 1, 1902, the allowance on coke was discontinued and that on coal reduced to 12 cents per ton, this being done, however, subsequent to the period of the action.

The mines of the Glen White company were connected with the defendant's main line by a spur track approximately 2 miles long, constructed with light rails, having sharp curves and a maximum gradient of about 3 per cent. For handling its coal to the line of the defendant with its own power over this spur track this company prior to 1902 received from the defendant an allowance on both coal and coke of 15 cents a ton. On January 1, 1902, the allowance on coke was discontinued, but the 15-cent allowance on coal was still made. In 1906 the allowances were again changed and payments of 10 cents per ton on both coal and coke were made not only to the Glen White company but to the Altoona company as well.

The mines of the Millwood company were reached from the defendant's main line by approximately $2\frac{1}{2}$ miles of narrow-gauge track, the operations over it being conducted by means of narrow-gauge equipment belonging to the coal company. Until April, 1899, the Millwood company received from the defendant an allowance of 15 cents a ton, and thereafter of 10 cents a ton, for hauling its product from the mines to the main line.

While the mines and ovens of the Latrobe and Bolivar companies also were connected with the main line of the defendant by spur tracks, the defendant, and not the coal companies, performed the service between the mines and coke ovens and the main line. Allowances of 10 cents and 15 cents a ton were, nevertheless, made to these companies by the defendant upon the theory that such payments were necessary to permit these operators to compete with those in the Clearfield district.

In November, 1905, the complainant here before us brought suit for damages against the Pennsylvania Railroad Company in the circuit court of the United States for the eastern district of Pennsylvania, the cause of action being as hereinbefore related. The referee to whom the case was submitted found that the payments, to certain shippers, under the guise of "lateral allowances" or "trackage" were in fact mere rebates and resulted in undue and unreasonable discriminations against the Mitchell company. The amount of damages was fixed at \$41,373.65. The referee's report, modified as to the

measure of damages, was confirmed by the lower court, 181 Fed., 403, the district judge holding that—

Whether it (the allowance) was such a compensation as the defendant might lawfully pay, or whether it was an unlawful rebate in disguise, was a question of fact, and the referee has decided it in favor of the plaintiff. With this finding I agree.

Before judgment was entered, however, the carrier moved to dismiss the case on the ground that until this Commission had passed upon the legality of the allowances and the reasonableness of the amounts paid, the court, as a federal court, was without jurisdiction. The motion was granted, 183 Fed., 908, and the proceeding was then taken by writ of error to the circuit court of appeals of that circuit, where it was dismissed, the court holding that the question could be reviewed only by the Supreme Court of the United States, 192 Fed., 475.

We have already referred to the decision of the Supreme Court of the United States on the jurisdictional question. In so far as the payments to the Bolivar and Latrobe companies were concerned, it was held that since the carrier itself performed the transportation service, it owed nothing to those companies, and that the allowance was therefore a mere gift, a rebate, and *ipso facto* illegal. Being an act prohibited by law, its status of illegality was not dependent upon or affected by any finding of fact the Commission could make; a ruling by this Commission was therefore held by the court to be unnecessary. In the case of the other companies named, a different conclusion was reached, and we quote from the last paragraph of the court's decision, p. 266:

The judgment, therefore, must be reversed in so far as the action is based upon payments to the Latrobe and Bolivar companies, and affirmed in so far as based upon payments to the Altoona, Glen White and Millwood companies. But owing to the peculiar facts of this case, the unsettled state of the law at the time the suit was begun and the failure of the defendant to make the jurisdictional point *in limine* so that the plaintiff could then have presented its claim to the Commission and obtained an order as to the reasonableness of the practice or allowance—direction is given that the dismissal be stayed so as to give the plaintiff a reasonable opportunity within which to apply to the Commission for a ruling as to the reasonableness of the practice and the allowance involved; and, if in favor of the plaintiff, with the right to proceed with the trial of the cause in the district court, in which the defendant shall have the right to be heard on its plea of the statute of limitations as of the time the suit was filed and any other defense which it may have.

We therefore are here concerned only with instances where the shippers received allowances for moving the coal and coke from their mines and ovens to the rails of the defendant carrier, the court having ruled that it is the duty of this Commission to determine the

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reasonableness both of the practice and of the allowances made under it.

During the period of the action blanket rates were applied to all markets, those from the Clearfield district being 20 cents a ton less than those applied from the Latrobe district; and although by express tariff provision the rates were made applicable only from the railroad stations, the defendant nevertheless in practice applied them from the mines and coke ovens of the shippers. The complainant here contends that even if the allowances were reasonable the payment of them was unlawful, because made for a service not included in the rate and not authorized by the tariff. This contention would be absolutely sound under the act to regulate commerce as it is in force to-day, the requirement of section 6 being that carriers shall not furnish to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in their tariffs; and this provision is strengthened by the authority given to the Commission under section 15 to determine what reasonable maximum allowance may be paid by a carrier to a shipper for a service of transportation rendered or any instrumentality furnished. But the statute in force when the transactions herein considered took place did not prohibit the furnishing of services not expressly authorized by tariff, nor did it forbid the payment to shippers of allowances therefor. It did, however, by sections 2 and 3 prohibit and declare to be unlawful every unjust discrimination and unreasonable advantage or preference with reference to commerce between the states. It is thus clear that while the practice of the defendant was not *ipso facto* unlawful, under the statutes then in force, because it was not authorized by tariff, it nevertheless was unlawful if the practice resulted in unjust discrimination or unreasonable advantage or preference.

The service over private tracks from the mines and coke ovens of shippers to the rails of the carrier is not now nor was it during the period of the action either compelled or prohibited by the statute or by the common law. To furnish it or to withhold it is within the discretion of the defendant; but whichever course is pursued the statutory inhibition of unjust discrimination and unreasonable preference or advantage must be observed. In the exercise of this right the defendant elected to furnish the service and therefore its admitted undertaking, so found by the Supreme Court of the United States, was to transport the product of the shippers from their mines and coke ovens at the rates published in its tariffs. If all the shippers of coal and coke were furnished the same character of service and also were required to pay the published tariff rates therefor, the undertaking in itself would not be discriminatory, nor would it result in unreasonable

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preferences or advantage. In order, however, to overcome physical disabilities, such as unusual grades, light rail, and abnormal curvatures, the defendant employed some of the shippers to perform a part of its undertaking by hauling their products from their mines and coke ovens to its rails, paying to them for this service varying allowances. Even this practice by itself would not be discriminatory, nor would it result in unreasonable preferences or advantages if the allowances to all shippers who performed the services were no more than sufficient to compensate them for its cost, including a reasonable profit of the same percentage to all shippers. If, however, the allowances included appreciable profits of unequal percentages, the shippers receiving the greater percentage of profit were given unreasonable preferences and advantages over competing shippers who received no such allowances because the defendant carrier, instead of themselves, either did or was ready and willing to perform the service.

It will be remembered that having encountered certain physical disabilities in reaching the mines and coke ovens of the Altoona, Glen White, and Millwood companies, the defendant chose to employ these shippers to haul their products to its rails, but that no such disabilities had to be overcome in reaching the mines of the complainant; and although the complainant, subsequent to October, 1899, voluntarily performed the same character of service as did its competitors, the defendant nevertheless refused allowances therefor upon the ground that it was ready, willing, and preferred itself to perform the service. A somewhat similar situation was presented in *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237, 244, and we there held that—

The complainant is not entitled to compensation as demanded by it in the complaint or on any other ground developed upon the record. It assumed charge of the work of switching cars between its storage tracks and various points within the inclosure of its plant, not because the defendants refused longer to spot cars for it or because they did not give the complainant a reasonably good service in that respect, but simply because the growth of its business to vast proportions, the multiplication of its buildings, and the extension of its switching arrangements within the inclosure required the complainant to take charge of the interior switching for itself and to exclude the defendants from its plant. And it now demands compensation for doing that which it claims the defendants are under the obligation to do, but which it does not and could not permit them to do. On that ground alone the complaint is without merit.

That case was cited with approval in *United States v. Baltimore & Ohio R. R. Co.*, 231 U. S., 274, 293, wherein it was held, to quote from the syllabus, that—

A carrier may compensate a shipper for services rendered and instrumentalities furnished in connection with its own shipments; and if the amount is

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reasonable it is not a prohibited rebate or discrimination, even if the carrier does not allow other shippers to render and furnish similar services and instrumentalities and compensate them therefor.

The report of the referee before whom the case here before us was first heard, as shown upon the transcript of the record in the Supreme Court of the United States, contains the following finding of fact in connection with the operations of the Altoona and Glen White companies:

The grade and curvature on these branches operated to materially control and restrict the number of cars that could be moved with safety at one time over the same. Dependent upon the weather conditions, the number that could be safely moved varied from four to six, and the time consumed in the movement, because of such grades and curvature, of each draft of cars was about four times as great as would have been consumed in the movement of the same number of cars the same distance over a comparatively level line.

The above finding is confirmed by the testimony of record here by operating officials of the Pennsylvania Railroad, which makes it clear that had the defendant attempted to use its road engines for the purpose of moving the empty cars to the mines and the loaded cars therefrom an unreasonable detention to trains would have resulted. In the opinion of the officials of the defendant it would have been necessary to assign to that work special engines of such construction as to enable them to operate over the sharp curves. At the Millwood mine the narrow-gauge track prevented the defendant from hauling the mine products to its rails. At the mine of the complainant, however, none of these disabilities were encountered, and the best evidence that the defendant was there prepared to perform the service itself is in the fact that it actually did so during the period prior to October, 1899. We therefore find and conclude that, as between the complainant and its competitors, the different physical conditions justified the defendant in employing different methods in the performance of its undertaking; and that in the physical service itself there was no discrimination between the several shippers. We are thus led to inquire into the reasonableness of the allowances paid by the defendant to the competitors of the complainant under the circumstances here stated.

Of the five companies concerned in this proceeding, the Altoona company received the larger allowances, amounting to 18 cents per ton on coal and 20 cents per ton on coke. The financial interest in this company of officers of the Pennsylvania Company, here defendant, was suggested of record by the complainant as possibly accounting for the seeming liberality in the allowances. The assistant to the president of the Pennsylvania Company, the brother of the president, and the general superintendent of the district where the mines were located, were large stockholders in the Altoona com-

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pany; and it is not inconceivable that this fact may to some extent have influenced the defendant carrier in its relations with that coal company. While not without significance, this testimony merely suggests a possible explanation for the allowances being disproportionately high, but it is not of probative value in determining whether they were reasonable or excessive. The evil that may arise from the ownership of stock in coal companies and other commercial enterprises by railroad officials has been brought to the attention of the public in other proceedings and also to the attention of the Congress in response to public resolution 8 of March 7, 1906, and public resolution 11 of March 21, 1906, both relating to discrimination and monopolies in coal and oil. There is therefore no occasion for further discussion of the subject here.

In dealing with the reasonableness *per se* of the allowances we are immediately confronted with a total lack of reliable information of record regarding the construction cost of the spur tracks and the expenses incident to their operation. Prior to the hearing the presidents of the coal companies were directed to produce, among other documents, the books, papers, and records showing not only the cost of the spur tracks but also the cost of their maintenance and operation since the date they were built. None of these original records were produced at the hearing. The defendant presented a statement, prepared in 1907 by two coal company employees, since deceased, purporting to show the cost of the Glen White spur track and the operating expenses by years from November, 1896, to October, 1901. No attempt was made to prove the accuracy of the statement by original records. The statement shows the cost of moving coal and coke over the spur track of the Glen White company to be from 10.29 cents to 16.71 cents per ton, allowing for a return of 6 per cent on an investment of \$28,240, and 5 per cent for depreciation.

The complainant, on the other hand, attempted to prove by a civil engineer and former assistant supervisor of the Pennsylvania Railroad at Gallitzin, that, estimating the average output at 1,000 tons a day, and allowing 6 per cent on an investment of \$28,000, the cost per ton of coal moved over the Glen White spur was 2.2 cents. This same witness found the cost to the Altoona company to be about 3 cents per ton. We have, therefore, for the cost of moving the coal over the Glen White Railroad, these two extremes of 16.71 cents and 2.2 cents, and an estimate of 3 cents for the cost over the Altoona company's spur track.

Some additional light is thrown on this feature of the cost of the service through a letter written in October, 1900, by the manager of the Altoona company to the general superintendent of motive

power of the Pennsylvania Railroad. It appears that the management of the coal company was dissatisfied with the price of 95 cents per ton paid it for coal purchased by the defendant and delivered on its tracks over the tipple, and made the request that the price be advanced to \$1.05. To show that the margin of profit at the price of 95 cents was insufficient, the total cost of the coal from the pit at the mine to the tipple was given for a period of five months, divided into operating cost and the general expenses at the mine, the cost of the spur-track operations, and the expense at the tipple. Taking the figures given, the cost of the spur-track service, which included the wages of the operating crew, trackmen, and the cost of all supplies for the maintenance of the locomotive and track, was as follows: 11.1, 5.3, 7.2, 9.1, and 5.9 cents per ton of 2,000 pounds, or an average of 7.7 cents. This average is perhaps too high, as it includes an extraordinary expense of \$1,800 in the first month for repairs to the locomotive. This also was a period of summer production, from April to August, when the movement of tipple coal was undoubtedly light. The tipple expense, which was incurred only in connection with coal intended for use by the Pennsylvania Railroad, averaged 3.2 cents per ton. It would thus appear that in so far as the Altoona company was concerned its allowances of 18 and 20 cents a ton were grossly in excess of the cost of the service, and included very appreciable profits.

It will be recalled that the spur leading to the Altoona company's mine was longer than the Glen White branch, that the grade was steeper and the operating conditions were less favorable, and it may therefore reasonably be inferred that the expense to the latter company was something less than to the former; therefore the accuracy of the statement heretofore referred to, which showed a maximum cost to the Glen White company of from 10.29 to 16.71 cents per ton, becomes questionable.

That an allowance of 7.7 cents per ton, the average cost shown by the Altoona company, may have been unreasonably high is suggested by the fact that the cost of assembling bituminous coal from the Pocahontas district of West Virginia, destined to the lake ports, has been found to be approximately 5.6 cents per ton for an average distance of 28 miles. *In re Rates for the Transportation of Coal by the Chesapeake & Ohio Ry. Co.*, 22 I. C. C., 604.

To substantiate its contention that the allowances under discussion were not excessive, the defendant calls attention to the allowances approved by the Commission in the case of certain tap lines of from 5 to 7 miles in length, and shows that those allowances were fixed at a minimum of 1 cent per 100 pounds where the length of the haul did not exceed 6 miles. The allowances to the coal companies ranged

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from about 7 mills to 1 cent per 100 pounds, and it is therefore claimed that the payments were relatively about on a parity with those authorized by the Commission in *The Tap Line Case*, 23 I. C. C., 277. This comparison is of little value here, however, as we need not go beyond the admission of the Altoona company that the cost of the service averaged 7.7 cents per ton.

Reference was made by the complainant to the difference in the prices paid by the defendant for fuel coal supplied by the Altoona company in railroad cars at the junction and for the fuel coal supplied over the tipple. The price paid for the coal delivered over the tipple was 20 cents per ton in excess of that paid for coal delivered in cars, and it is asserted that the higher price was intended to compensate the coal company for the cost of transporting this coal over the spur track. This is denied by the defendant, but no explanation was offered as to why so great a difference in the prices should have obtained except that that was the uniform difference in price between coal delivered in cars and coal delivered over the tipple in the Clearfield district. By far the greater part of the coal supplied the defendant was delivered over the tipple. The Altoona company has stated that the actual cost of the tipple service amounted to about 3.2 cents per ton, but the reason for paying a price so much in excess of the cost is left unexplained. Subsequent to April 1, 1900, the mountain region prices were 85 cents for car coal and 95 cents for tipple coal, a narrowing of the difference to 10 cents per ton, but the Altoona company received \$1.05 on its statement that the expense of hauling the coal ought to be taken into consideration.

The arrangement between the Pennsylvania Railroad and the Altoona company for the supply of fuel coal, while perhaps of interest as showing the disposition of the carrier to be more liberal with that company, is not helpful in the disposition of this case. We must consider the pertinent facts as they appear of record and determine from them what would have been a reasonable allowance, including a reasonable profit, as compensation to the Altoona company for the services it rendered on behalf of the carrier.

The complainant has estimated the cost of the railroad service over the Altoona spur as between 3 and 4 cents per ton; the Altoona company has stated that cost to be, during a period of relatively light production, 7.7 cents per ton; and we know that the cost of assembling the same kind of coal much greater distances from mines in a not dissimilar character of country is less than 6 cents per ton. Under all the circumstances it may fairly be inferred, in the absence of definite proof to the contrary, that an allowance of 8 cents per net ton would have been a fair and reasonable payment to that company for its services and sufficient to yield a reasonable return upon

its investment. Upon the whole record we find and conclude that any allowance to the Altoona company in excess of 8 cents per net ton of coal or coke was unreasonable and unlawful and unjustly discriminatory in character. We come to the same conclusion with reference to the allowances to the Glen White company.

The complainant withdrew its attack upon the allowances made to the Millwood company. No testimony was offered in connection with shipments from that company, and we therefore reach no conclusion in reference to the allowances paid to it.

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INVESTIGATION AND SUSPENSION DOCKET No. 649.
DRESSED BEEF FROM NEW YORK, N. Y.

Submitted December 17, 1915. Decided February 7, 1916.

Proposed cancellation of carload commodity rates on "dressed beef cuts" from New York, N. Y., and other Atlantic seaboard cities to St. Louis, Mo., and East St. Louis, Ill., leaving third-class rates effective in their stead, found to have been justified. Order of suspension vacated.

J. M. Sternhagen for respondents.

R. D. Rynder for Swift & Company.

A. R. Urion, C. J. Faulkner, jr., and H. K. Crafts for Armour & Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

On December 1, 1912, the respondents herein established a commodity rate of 50 cents per 100 pounds on "dressed beef cuts" from New York, N. Y., to St. Louis, Mo., and East St. Louis, Ill., in carloads, minimum weight 20,000 pounds, the same as the rate then applicable on fresh meats in the reverse direction. The meats transported westbound on the "dressed beef cuts" rate are substantially the same, in cut, as those moving eastbound on the "fresh meats" rate. By increases following *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325, and in *Eastern Live Stock Case*, 36 I. C. C., 675, both the westbound and the eastbound rates were subsequently increased to 52.5 cents. The rates given herein are in cents per 100 pounds. St. Louis as hereinafter referred to in this report will be taken to include East St. Louis.

By tariffs filed to become effective June 1, 1915, and suspended in this proceeding until March 29, 1916, respondents proposed to cancel the westbound commodity rates on dressed beef cuts leaving in effect third-class rates on fresh meats, upon which basis the rate from New York to St. Louis will be 61.4 cents. The class rate from New York to St. Louis, which carriers assert should be applied to this traffic, is 22.8 per cent higher than the commodity rate as originally established prior to the decision in *The Five Per Cent Case, supra*. This proceeding also involves a few commodity rates on dressed beef cuts from other north Atlantic seaboard cities to St. Louis, which are related to the rates from New York. Our discussion will be largely confined to the New York rate, which is typical of all the rates involved.

Commodity rates from New York and other points to St. Louis are exceptions to the general adjustment of third class in rates on fresh meats westbound. From New York to Chicago, Ill., for example, the full third-class rate is charged of 52.5 cents, which happens to be the same as the commodity rate New York to St. Louis, here under consideration. Respondents fear that the continued maintenance of this commodity rate will disrupt existing rate structures westbound and eastbound. They also insist that its purpose has failed because the expected movement has not materialized. Protestants insist that the present rate is shown by various tests to be fully remunerative.

The westbound commodity rates here under consideration were established upon the application of a packer who expected to ship a considerable tonnage from New York to Dallas and Fort Worth, Tex., using the 50-cent rate to St. Louis and a rate of 47½ cents beyond. Although the latter rate was never established, the rates to St. Louis have been used for local shipments of surplus products of kosher slaughtering plants in the east to St. Louis and also to points farther west. Subsequent to the removal of the import duty on beef in the fall of 1913, and prior to the outbreak of the European war, the commodity rates were also used for the transportation of South American beef. The record is not clear as to the volume of the movement under these rates. The carriers insist that only 60 carloads were transported from December 1, 1912, to October 15, 1915, while according to protestants at least 200 carloads per annum have moved on these rates from eastern points to St. Louis and beyond.

From eastern seaboard territory the rates upon which fresh meats, dressed beef, and dressed beef cuts, in carloads, are transported to central freight association points are usually third class. The commodity rates here concerned are apparently the only exception. It appears, however, that for two years there has been pending before the carriers an application to reduce the New York to Chicago rate of 52.5 cents to equal the eastbound commodity rate of 47.5 cents recently found reasonable in *Eastern Live Stock Case*, supra. From St. Louis the rate to New York is now usually fixed at 5 cents over the rate from Chicago. Within central freight association territory rates on fresh meats are not usually the same in both directions between two packing points.

The following table shows a comparison of the commodity rate from New York to St. Louis, here involved, with rates on meats and other commodities in the same territory:

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From—	To—	Distance.	Commodity. ¹	Rate.	Minimum weight.	Revenue per ton-mile.	Revenue per car-mile.
		<i>Miles.</i>		<i>Cents.</i>	<i>Pounds.</i>	<i>Mills.</i>	<i>Cents.</i>
New York.....	St. Louis.....	1,063	Dressed beef cuts.....	\$52.5	20,000	9.88	9.88
Do.....	do.....	1,063	Dressed meats, fresh.....	\$61.4	20,000	11.55	11.55
Do.....	do.....	1,063	Grapelruit.....	49.1	24,000	9.24	11.09
Do.....	do.....	1,063	Lemons.....	49.1	24,000	9.24	11.09
Do.....	do.....	1,063	Oranges.....	49.1	24,000	9.24	11.09
Do.....	do.....	1,063	Oysters and clams.....	49.1	24,000	9.24	11.09
Do.....	do.....	1,063	Pineapples.....	49.1	20,000	9.24	9.24
Do.....	Chicago.....	912	Fresh meats.....	\$52.5	20,000	11.51	11.51
Do.....	do.....	912	Grapelruit.....	42.0	24,000	9.21	11.05
Do.....	do.....	912	Lemons.....	42.0	24,000	9.21	11.05
Do.....	do.....	912	Oranges.....	42.0	24,000	9.21	11.05
Do.....	do.....	912	Oysters and clams.....	42.0	24,000	9.21	11.05
Do.....	do.....	912	Pineapples.....	42.0	20,000	9.21	9.21
St. Louis.....	New York.....	1,063	Fresh meats.....	\$52.5	21,000	9.88	10.37
Chicago.....	do.....	912	do.....	47.5	21,000	10.42	10.93

¹ All these commodities are classed in official classification, governing these hauls, as third class.

² Present rate.

³ Proposed rate.

The volume of movement and actual loading of the commodities named in the table are not disclosed by the record. It may be presumed since the commodities are perishable that the loading is usually little, if any, in excess of the required minimum.

Protestants lay great stress upon the comparisons of the ton-mile revenue yielded by the rates shown above. Car-mile earnings, however, have long been considered of greater force. *Proposed Advances in Freight Rates*, 9 I. C. C., 382; *Thompson Lumber Co. v. I. C. R. R. Co.*, 13 I. C. C., 657; *Rates on Coal to Lake Erie Ports*, 22 I. C. C., 604. As disclosed by the table the car-mile earnings indicate that the third-class rate from New York is more in harmony with the other rates shown than the present commodity rate. Protestants show that the average ton-mile revenue on all traffic handled for some of the important routes over which this commodity rate applies is considerably less than the ton-mile revenue which the present commodity rate yields. This showing, however, is of little weight unsupported by the exposition of the character and length of haul of the traffic of each road.

Protestants also compared the suspended rates with commodity rates on fresh meats from Pittsburgh, St. Paul, St. Louis, Milwaukee, and Memphis to eastern destinations and with rates in territory of less traffic density from South St. Paul to Chicago, between Chicago and Missouri River points, and from Marshalltown and Mason City, Iowa, to Mississippi River points, showing that these rates produce less revenue per ton-mile and per car-mile than is derived under the third-class rate from New York to St. Louis. These comparisons, although they bear upon the question here in issue, are not controlling in its determination. The present commodity rates apply westbound and move a very small tonnage compared with that moving eastbound. The large eastbound tonnage has certainly had its

effect in the establishment and maintenance of the level of east-bound rates. *Eastern Live Stock Case, supra; Burgess v. Transcontinental Freight Bureau*, 13 I. C. C., 668; *Commercial Club of Omaha v. B. & O. R. R. Co.*, 19 I. C. C., 397. The record discloses no relationship in westbound rates between fresh meats and live stock, nor is any westbound movement of live stock shown.

It is urged that with the cessation of the European war there will be a large increase in movement under the suspended rates due to imports of South American meats and that sooner or later the west-bound movement will probably equal that eastbound. This, however, is prophecy.

The record reveals no reason why the rates on dressed beef cuts to St. Louis should be on a different basis than the rates on the same commodity from the same points of production in the same direction to the same general territory of destination. *Westbound Lake and Rail Knit Goods Commodity Rates*, 32 I. C. C., 54. The third-class rates, which will become effective upon cancellation of the commodity rates herein involved, are in harmony with the general adjustment of rates westbound. Both protestants and respondents were under the impression that under the class rates a carload minimum of 21,000 pounds is provided for fresh meats. Tariffs on file with the Commission indicate, however, that the minimum weight is 20,000 pounds, the same as that provided in the present schedules. A minimum weight of 21,000 pounds is not objected to by protestants.

The proposed cancellations are found to be justified, and the order of suspension will be vacated.

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No. 7428.

TEXARKANA FREIGHT BUREAU

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL

Submitted April 26, 1915. Decided February 7, 1916.

Carload rates on bananas and other tropical fruits from New Orleans, La., to Texarkana, Ark.-Tex., found unjustly discriminatory and unduly prejudicial to the extent that they exceed, by more than 10 cents per 100 pounds, the rates contemporaneously maintained from New Orleans to Shreveport. Removal of the discrimination ordered.

E. F. Hollies for complainant.

E. L. Billingsley for Texas & Pacific Railway Company.

George Helms and *A. L. Burford* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The allegation of this complaint is that the carload rates on tropical fruits from New Orleans to Texarkana are unreasonable when compared with the rates on the same commodities from New Orleans to Shreveport. The latter, a city with a population of about 40,000, on the Red River in northwestern Louisiana, is 326 miles distant from New Orleans over the rails of the Texas & Pacific and 307 miles by way of the Louisiana Railway & Navigation Company's line. Texarkana has some 15,000 inhabitants and is 73 miles north of Shreveport over the Kansas City Southern. The line of the Texas & Pacific from New Orleans also passes through Shreveport to Texarkana and the traffic here involved moves through Shreveport. Both cities are served by railways radiating in other directions and are jobbing points. Texarkana, however, unlike Shreveport, is not on any navigable waterway.

In other recent cases we have heard Shreveport complain of unjust discriminations against it under alleged maladjustments of rates in the surrounding territory, and in several of these proceedings the relief asked has been granted. But here Texarkana complains of an unjust discrimination said to result from a rate preference that is given to Shreveport. A careful analysis of the question is therefore necessary in order that the principle invoked and applied in

those cases in behalf of Shreveport may not be impaired or lost sight of here in considering the rights of the competing communities.

The rate from New Orleans on oranges, lemons, limes, grapefruit, bananas, pineapples, and coconuts, all the commodities named in the complaint, is to Shreveport 25 cents per 100 pounds and to Texarkana 43 cents. The difference of 18 cents was formerly the class A rate between those two points, which has since been advanced to 24 cents. The complainant contends that for an additional haul of but 73 miles this difference of 18 cents in the inbound rates is excessive; and the Commission is asked to establish to Texarkana for the future a rate not over 5 cents higher than the Shreveport rate, or 30 cents. Reparation on shipments in the past is also asked. It is further demanded that the carload minimum weight now in effect on all the commodities above named except bananas be reduced from 24,000 pounds to 20,000 pounds. While the complaint asks that the minimum weight on bananas be reduced from 20,000 pounds to 18,000 pounds, at the hearing this request was withdrawn.

In support of its demand for lower rates the complainant submits the following comparison of rates and distances, the rates being stated in cents per 100 pounds:

From New Orleans to—	Miles.	Oranges, lemons, limes, grape- fruit.	Bananas.	Pine- apples.	Coco- nuts.
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Texarkana.....	379	43	43	43	43
Shreveport, La.....	306	25	25	25	25
Memphis, Tenn.....	396	30	35	35	20
Little Rock, Ark.....	522	40	40	40	35
Fort Smith, Ark.....	604	50	50	50	45
St. Louis, Mo.....	710	43	43	43	28
Chicago, Ill.....	930	47	46	46	35
Kansas City, Mo.....	879	.....	65	.....	.....
Topeka, Kans.....	947	.....	73	.....	.....
Wichita, Kans.....	961	.....	73	.....	.....
Hutchinson, Kans.....	1,009	.....	73	.....	.....
Muskogee, Okla.....	799	.....	95	.....	.....
Tulsa, Okla.....	728	.....	70	.....	.....

¹ Via Memphis.

It will be noted that to Texarkana the same rate applies on all these commodities; this is true also as to Shreveport. As practically all the testimony of record relates to banana shipments it will be understood, unless otherwise stated, that the rates referred to herein are the rates on bananas.

The testimony shows that the low inbound carload rate to Shreveport, together with the outbound less-than-carload rates to points north and northeast of Texarkana, if used by the Shreveport jobbers, would make a lower combination of rates, inbound and outbound, than is available to the Texarkana jobbers. The Shreveport dealers could thus deliver fruits at points on the Kansas City Southern in

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Arkansas at a total charge about 3 cents per 100 pounds less than is available to the Texarkana jobbers. The traffic manager of the Texarkana Freight Bureau stated that if it were not for the local consumption there would not be any jobbing of bananas at Texarkana. The principal produce dealer at Texarkana testified, however, that while he had encountered the competition of Shreveport dealers at all points between Shreveport and Texarkana he had no personal knowledge that the Shreveport dealers were soliciting or doing business at points north of Texarkana, and no evidence showing such competition was introduced. The defendants filed an exhibit showing shipments of oranges, lemons, and bananas from Texarkana, for the six months ending June 30, 1914, to destinations including points on the Kansas City Southern almost as far south as Shreveport, indicating that the present rate adjustment does not bar the Texarkana dealers from that territory. Statements were also filed showing that Texarkana, under the present rates, ships tropical fruits to a considerable area of territory at lower combination inbound and outbound rates than are open to Shreveport dealers. Although the Kansas City Southern has a direct line extending from Shreveport through Texarkana to points north thereof, that defendant has placed in the record a statement to the effect that an examination of six months' billing failed to show a single shipment of tropical fruit from Shreveport to points north of Texarkana; and there is no evidence of record showing that the Shreveport jobbers avail themselves of this seeming advantage in rates to points north of Texarkana.

The defendants claim that the rate from New Orleans to Shreveport is low, having originally been established by the rail carriers to meet the competition of steamboats on the Red River and later continued in force under an order of the Railroad Commission of Louisiana. The record in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, contains much of interest regarding the influence of such competition upon the Shreveport rates. In our report in that case it is said, pp. 573, 574:

The testimony shows that from 1858 until 1905 boats were regularly operated on the Red River and that a large volume of freight was shipped by water to Shreveport. No boats have been operated since 1905, with the exception of one, which made a trip in 1910. Defendants contend that the channel is navigable and that the boats are kept out of service by the adjustment of rates on the rail carriers. It was stated that an appropriation of \$200,000 is available for the improvement of the Red River, and that even a slight increase in rail rates to Shreveport will bring the boats back into service. * * * Records of the government engineers show that the level of the Red River at Shreveport was below zero, the point at which engineers believe navigation to be possible, 179 days in 1909, 180 days in 1910, 237 days in 1911, and 172 days in 1912, but it was testified by the freight traffic manager of the Steamboat Traffic Association that navigation is possible when the level of the river is several feet below the government zero mark.

Similar testimony regarding the history of the Shreveport rates was given by witnesses in the present case. It was also stated at the hearing that the railway companies, in a proceeding before the Louisiana state commission, are seeking to increase their state rates, including those between New Orleans and Shreveport.

As the complainant made no contention of record against the reasonableness *per se* of the Texarkana rates, it will be unnecessary here to discuss in detail the evidence offered by the defendants upon that point. The real question that we are called upon to decide is whether one of these communities has such a rate advantage over the other in respect of their inbound rates as to require a relief order. As we have shown, the alleged discrimination is between state and interstate rates, the question being substantially the same as that involved in *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31; 234 U. S., 342. There Shreveport was complaining of a discrimination that resulted from the maintenance of rates from Dallas and Houston to points in eastern Texas on a lower scale for a considerably greater distance than were maintained to the same points from Shreveport. Here the situation is reversed, Texarkana complaining of a preference by the carriers to Shreveport in maintaining to that point state rates disproportionately lower than the interstate rates maintained to Texarkana for a distance that is not much greater. A somewhat similar situation was presented to the Commission in *Carroll, Brough & Robinson v. A., T. & S. F. Ry. Co.*, 31 I. C. C., 466. In that case the Commission found undue discrimination between the rates from Galveston to northern Texas points and adjacent Oklahoma points. Comparison was made with the rates to various points, some of which were affected by water competition. The Commission said, p. 470:

The effect of the Texas state scale used by the carriers is to give to the towns in the northern part of that state a distinct and unlawful advantage over towns across the border in Oklahoma, so that there is unjust discrimination against interstate traffic in favor of intrastate traffic. Although there is doubtless some truth in defendants' contention that the relatively low rates from New Orleans to St. Louis, Kansas City, Fort Smith, and other points are the natural result of water competition, the limitation placed upon the activity of the Oklahoma City jobbers in the territory to the south and west of them is wholly artificial. In the *Shreveport Case*, 23 I. C. C., 31, we held such discrimination to be unlawful and subject to the jurisdiction of this Commission.

The Commission has many times held that discrimination may be justified by water competition, subject, however, to the limitation that the discrimination must not exceed the real effect of the competition. That the present state rates between New Orleans and Shreveport were originally established in recognition of water competition is beyond question. It is also shown of record, however, that such

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competition by the water route is no longer active; and the fact that the rail carriers are seeking the authority of the state commission to raise their rates between New Orleans and Shreveport is evidence that they no longer regard water competition as potential or controlling. Looking, then, at this relation of rates without regard to such considerations, it is apparent that the adjustment is not a correct one. The rate of 25 cents per 100 pounds from New Orleans to Shreveport yields a ton-mile revenue of but 1.53 cents for the distance of 326 miles over the line of the Texas & Pacific. From New Orleans to Texarkana the rate of 43 cents yields a ton-mile revenue of 2.27 cents, and this is lower than the ton-mile earnings on bananas approved by us in *Waco Freight Bureau v. H. & T. C. R. R. Co.*, 19 I. C. C., 22. There we found that a rate of 72 cents per 100 pounds, yielding a ton-mile revenue of 2.4 cents for a 600-mile haul under transportation conditions substantially the same as here shown, was not unreasonable.

In asking that a differential of 5 cents over the Shreveport rate be maintained to Texarkana the complainant evidently relies largely upon our decision in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, *supra*, where a maximum differential of 6 cents between Shreveport and Texarkana was prescribed on southbound traffic from St. Louis, Kansas City, Memphis, and points still more remote. The traffic there considered moves over the direct rail lines to Texarkana, although the rates applied are in some cases constructed through the lower Mississippi River crossings and Shreveport. In fixing this differential of 6 cents we applied the principle announced in *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154, 165, where it was said:

In making joint through rates on long distance traffic to local or noncompetitive points differentials above the rates to basing points should bear some reasonable relation to the total distances involved.

In this proceeding we are dealing with a traffic movement of 399 miles, as compared with a movement averaging over 500 miles and a rate-making route much longer.

The attention of the Commission was particularly directed to the rates on bananas to Little Rock and Fort Smith, which are, respectively, 5 cents and 15 cents above the rate to Memphis, the additional distances through Memphis being, respectively, 133 miles and 298 miles; and it was contended, as before stated, that for the difference of 73 miles in distance between Texarkana and Shreveport, 5 cents should be considered an ample allowance. In the same connection it is pointed out that Topeka, Wichita, and Hutchinson, respectively 68 miles, 228 miles, and 235 miles distant from Kansas City, pay from New Orleans a rate but 8 cents in excess of the Kansas City rate.

Complainant's contention apparently rests upon the assumption that the rates to Little Rock, Fort Smith, Topeka, Wichita, and Hutchinson are based upon the rates to Memphis and Kansas City, as the Texarkana rate is based upon the Shreveport rate; but this assumption is not correct, and the differences cited can not be taken as a proper measure of the difference between rates to Texarkana and Shreveport.

Upon a careful consideration of the whole record we are of the opinion and find that the present rates on tropical fruits from New Orleans to Texarkana, while not unreasonable in themselves, are, and for the future will be, unjustly discriminatory and unduly prejudicial to Texarkana to the extent that they exceed by more than 10 cents per 100 pounds the rates contemporaneously maintained on like traffic from New Orleans to Shreveport. It may be remarked in passing that, should the rail carriers be successful in establishing and maintaining higher rates on these commodities from New Orleans to Shreveport, such advance, if sufficient, would eliminate the rate disparity which gave rise to this complaint. In considering the question now before us, however, we can not properly give weight to the possible result of that proceeding.

There being no evidence of record that the Texarkana shippers have been damaged as a result of the rate advantage of Shreveport, we find and conclude that reparation should be denied.

Upon the question of proper carload minimum weights, which is also involved in this complaint, but little evidence was offered. The average loading of tropical fruits in carloads between New Orleans and Texarkana is about 21,500 pounds, although some cars are loaded as heavily as 23,000 pounds. The present carload minimum weight for oranges, lemons, limes, grapefruit, pineapples, and coconuts from New Orleans to Texarkana is 24,000 pounds, but on bananas, the principal commodity involved, the minimum weight is 20,000 pounds. Minimum weights to other interstate destinations are in some cases lower, but the record now before us affords no sufficient basis for a disturbance of the present tariff provisions in this respect.

An order will be entered in conformity with the conclusions here reached.

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INVESTIGATION AND SUSPENSION DOCKET No. 705.
BOSTON-NEW YORK PROPORTIONAL RATES.

Submitted November 29, 1915. Decided February 8, 1916.

Proposed cancellation of proportional and transshipment class and commodity rates between points in southeastern New England and New York, N. Y., applicable on traffic moving through the port of New York, in connection with certain steamship lines operating between New York and the Pacific coast through the Panama Canal, not justified.

L. H. Kentfield for New York, New Haven & Hartford Railroad Company and New England Steamship Company, respondents.

A. E. Allen for Boston & Albany Railroad Company.

E. C. Southwick, G. F. Hichborn, J. D. Hashagen, and W. H. Chandler for protestants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The New York, New Haven & Hartford Railroad Company and the Boston & Albany Railroad Company publish proportional and transshipment class and commodity rates between certain points on their lines in Massachusetts and Rhode Island and New York, N. Y. These rates are applicable on traffic moving through the port of New York in connection with certain steamship lines, specified in the tariffs, which operate between New York and the south Atlantic ports, and between New York and the Pacific coast through the Panama Canal. In the tariffs suspended in this proceeding, filed to become effective September 1, 1915, the respondents proposed to cancel the proportional and transshipment rates in connection with those steamship lines which operate through the Panama Canal. Protests were filed by the National Fireworks Distributing Company, New England Confectionery Company, and Mellin's Food Company. The operation of the proposed tariffs was suspended by appropriate orders until June 30, 1916.

The respondents did not attempt to justify the cancellation of the rates in question, and they express of record their willingness to cancel the suspended tariffs. Their only witness explained that it was not proposed to cancel the proportional and transshipment rates in connection with those steamship lines which operate between New York and the south Atlantic ports, and that the respondents were not

prepared to justify the discrimination which would apparently result from the cancellation of such rates in connection with the lines operating through the canal.

We are of opinion and find that the proposed increased rates are not shown to be just and reasonable, and an order will be entered requiring their cancellation.

INVESTIGATION AND SUSPENSION DOCKET No. 674.
MELON REFRIGERATION CHARGES.

Submitted November 8, 1915. Decided February 18, 1916.

Proposed increased refrigeration charges on shipments of melons from points on the Colorado Midland Railway in western Colorado, and from what are designated as the western Colorado and Utah groups on the Denver & Rio Grande Railroad, to destinations throughout the greater part of the United States and Canada, found justified.

J. G. McMurry for respondents.

S. G. McMullin for Grand Junction Fruit Growers' Association.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The schedules under suspension in this proceeding propose increased charges for the refrigeration of melons moving from points in western Colorado on the Colorado Midland Railway, and from points comprising what are designated in such schedules as the western Colorado and Utah groups on the Denver & Rio Grande Railroad, to destinations throughout the greater part of the United States and Canada. The western Colorado group embraces a number of stations on the line of the Denver & Rio Grande Railroad in New Mexico as well as on the western slope of Colorado, while the Utah group comprises all stations on that line in Utah. These schedules were filed to become effective July 5, 1915, but upon protest by the Grand Junction Fruit Growers' Association, of Grand Junction, Colo., were suspended until May 2, 1916.

The charges are published as applicable to melons. Cantaloupes comprise the great bulk of refrigerated melon shipments.

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The refrigeration charges on melons are now the same as on vegetables and fruits, except on apples from western Colorado in straight carloads under "half-tank" refrigeration. The proposed refrigeration charges on melons in straight carloads, or in mixed carloads with vegetables and fruits, would exceed charges on other vegetables and fruits by amounts ranging from \$2.50 to \$15 per car. In most instances the excess would be \$5 per car.

Protestant did not introduce evidence or cross-examine respondents' witnesses. No briefs were filed.

At the hearing in August, 1915, respondents contended that refrigeration charges on shipments of melons do not equal the cost of the service, and that the proposed rates are intended to lessen the loss and secure greater uniformity.

During the five years from 1910 to 1914, inclusive, some 580 cars of cantaloupes were shipped from western Colorado and Utah. It was estimated that in 1915 the movement would be six cars from Utah and none from western Colorado.

A number of exhibits show refrigeration expenses incurred in the movement of cantaloupes from the territory of origin during 1913 and 1914. These were prepared in accordance with the rulings in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106; *Atchison Railway Co. v. United States*, 232 U. S., 199; *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17; *Montrose & Delta Counties Freight Rate Asso. v. R. R. Co.*, 34 I. C. C., 400. They show that the cost of the service per car exceeded the revenue per car.

Throughout the United States generally refrigeration charges are, and have been for many years, higher on melons than on other vegetables and fruits, the excess ranging from \$5 to \$20 per car. It appears that melons, owing to their size and shipment soon after picking, retain a greater quantity of "field heat," and require more ice than do other vegetables and fruits. While the initial icing was the same, shipments of cantaloupes in 1914 from the territory of origin required an average of 4,137 pounds of ice for the first re-icing, as against an average of 2,489 in the case of deciduous fruits other than apples, and in like proportion for subsequent re-icings.

In the table following the proposed refrigeration charge on cantaloupes from Grand Junction, a representative point of origin in western Colorado, to Chicago, Ill., is compared with such charges from other representative points to the same destination. The charges are stated in dollars and cents per car.

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To Chicago from—	Short-line distance.	Charge.
	<i>Miles.</i>	
Grand Junction, Colo.....	1,447	\$52.50
Rocky Ford, Colo.....	1,002	50.00
Ordway, Colo.....	1,026	58.00
Turlock, Cal.....	2,276	75.00
Imperial Valley, Cal.....	2,110	97.50
Phoenix, Ariz.....	1,929	100.00
Pecos, Tex.....	1,381	65.00
Tyler, Tex.....	907	55.00
Prescott, Ark.....	729	52.00
Vincennes, Ind.....	234	40.00
Camilla, Ga.....	934	64.00
Gainesville, Fla.....	1,155	72.00

Cantaloupes move in large quantities from the points specified. Chicago is not only a representative destination but a basing point for charges to other points.

Refrigeration charges are usually in dollars and cents per car, or in cents per 100 pounds, based on a certain minimum carload weight, with charges in proportion for any excess. Those proposed are in dollars and cents per car without additional charge for excess above the minimum carload. In 1913 the average loading in excess of the minimum weight of 20,000 pounds was 1,442 pounds, and in 1914 1,049 pounds per car, on shipments from western Colorado.

Upon the record we are of opinion and find that respondents have justified the proposed increased refrigeration charges. Our orders of suspension will be vacated.

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No. 7835.

NATIONAL PETROLEUM ASSOCIATION ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 4, 1915. Decided February 18, 1916.

Upon complaint alleging that the requirement that tank cars employed in transporting inflammable liquids shall be subjected to an interior cold-water pressure test of 60 pounds per square inch is unreasonable, unnecessary, and operates to the injury of complainants, *Held:*

1. That the primary purpose of the test, prescribed after an extended investigation, is to insure, in a measure, the strength and stability demanded of containers employed in the transportation of these inherently dangerous commodities.
2. That the prescribed degree of the pressure test represents the best judgment of experienced tank-car builders and technical experts, and is more reliable and contributes to a greater degree of safety than would a less rigorous test.
3. That the rule is a regulation of the use of instrumentalities of commerce employed in a dangerous service, and, being otherwise reasonable, does not, because of the fact that it entails some expense upon the owners and operators of tank cars, impose an unjust burden upon them. Complaint dismissed.

C. D. Chamberlin for complainants.

T. J. Norton and *Henry Wolf Bikelé* for defendants.

B. W. Dunn for Bureau of Explosives.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The National Petroleum Association, an incorporated association including within its membership companies, firms, and corporations engaged at various points in the United States in refining, selling, and shipping petroleum and its products, and the Cudahy Refining Company, engaged in like business at Coffeyville, Kans., complain of certain provisions in one of defendants' rules governing the transportation of inflammable liquids in which certain dangerous qualities are peculiarly inherent.

The rule provides, in general, that all inflammable liquids must be shipped in containers complying with certain structural specifica-

tions. The paragraph relating to tank cars, and containing the provision of which complaint is made, reads as follows:

1824 (j). In tank cars complying with Master Car Builders' specifications, provided the vapor tension of the inflammable liquid corresponding to a temperature of 100° F. (90° F. November 1 to March 1) does not exceed 10 pounds per square inch. After January 1, 1915, a tank car must not be used for shipping inflammable liquids with flash point lower than 20° F. unless it has been tested with cold-water pressure of 60 pounds per square inch and stenciled as required by Master Car Builders' rules.

Complainants aver that the rule is harsh, unreasonable, and unnecessary, in so far as it requires that tank cars must stand a cold-water pressure test in excess of 20 pounds per square inch; that it subjects complainants to unjust and unreasonable disadvantage and loss contrary to the provisions of the act to regulate commerce. They ask that we establish, in lieu thereof, such other regulations applying to the matter of pressure test as shall be found to be just and reasonable.

Under an act of Congress approved March 4, 1909, and the provisions of section 15 of the act to regulate commerce, as amended June 18, 1910, the Commission is directed and empowered to formulate and prescribe rules governing the interstate transportation of explosives and other dangerous articles. In 1910 the Commission instituted an investigation into the reasonableness of such rules governing the transportation of explosives and other dangerous articles as were in effect on the lines of carriers members of the American Railway Association. Thereafter we prescribed certain rules, effective March 31, 1912, one of which, relating to the transportation of inflammable liquids in tank cars, provided merely that tank cars used for the transportation of inflammable liquids should be of approved design and protected with satisfactory safety valves. No pressure test was prescribed at that time. Reports, thereafter required to be made, of operation under this rule disclosed much trouble arising from various defects in tank cars; and more effective measures apparently being necessary, further hearings, of which carriers and interested shippers were duly advised, were held. Pursuant to these further hearings, and as a result of the facts and information developed by the investigation, it was deemed necessary to prescribe specific rules to be observed by the shipper in preparing such commodities for shipment, and by the carrier in handling them while in transit. Accordingly, the rule herein complained of was promulgated.

The commodities which complainants chiefly ship and which are most affected by enforcement of the rule are petroleum products, such as gasoline, benzol (benzene), benzine, carbon bisulphide, naphtha, and other distillates. All of these commodities belong to

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a group which, in the primary classification for transportation purposes of dangerous articles other than explosives are known as inflammable liquids. That classification includes:

Any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open-cup tester, as used for test of burning oils) at or below a temperature of 80° F.

There is no question as to the dangerous qualities of the commodities or as to the propriety and necessity of applying some test to determine the efficiency and condition of tank cars used as containers in their transportation. The complaint goes solely to the rigor of the test prescribed by the rule. The only question, therefore, is whether or not the rule is reasonable in that particular, to determine which we look to the incidents of transportation, the efficiency and purpose of the test, and the effect on the shippers' business.

The complaint attacks the rule in its application upon the lines of defendants generally, but it is prosecuted in behalf principally of members of the Western Petroleum Refiners' Association, an organization hereinafter referred to as the refiners' association and composed of refiners and shippers in the so-called midcontinent field, which includes the oil fields of Oklahoma and Kansas.

The manufacture and shipment of the commodities affected by the rule have greatly increased in recent years. About 75 per cent of crude petroleum is now converted into gasoline and other interior combustion liquids. In the two years next preceding the hearing the output of gasoline in the midcontinent fields increased 166 per cent. The commercial distribution of the great quantities of these products is made practicable only by the use of tank cars specially adapted to that end, the demand for which has become more imperative with the increased production.

Tank cars are now built in compliance with rules and specifications of the Master Car Builders' Association, and only such cars as have been so constructed are permitted to be used for transporting the fluids referred to in rule 1824 (j).

A considerable number of old tank cars are in service throughout the country. Many of those used by members of the complainant association are from 15 to 20 years old. Some of them went into the service of complainants as secondhand cars. Of about 500 owned and operated by the Pennsylvania Railroad, none are less than 33 years old, and some are 46 or more years old. This exceeds the anticipated life of such cars by many years, and is doubtless an exceptional length of time for such cars to remain in service. The tank cars now in service may fairly be classified as old and modern; the first group including all those built prior to 1903, when there was

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no prescribed standard; the latter including those built since that year, most of them according to designs and specifications of the Master Car Builders' Association, which since that year has given special attention to the matter of tank car construction.

Transportation conditions, as the testimony shows, have become more strenuous in recent years. The advent of steel cars; the increased number of cars per train; the use of heavier and more powerful locomotives; the construction of "hump" yards and other devices to accelerate the movement and lessen the cost of handling trains; the use of safety appliances designed to minimize the danger to life and limb, have greatly changed operating conditions and tend to subject freight cars to harder usage. Such rough handling is a necessary part of modern transportation; cars must always be subject to shocks in shifting, and within reasonable limits they are expected to stand this rough treatment.

The personal danger attending the handling of cars containing these dangerous commodities is not restricted to railroad employees. The property risk is not the risk of the car owner or railroad company alone. It is a matter of common knowledge among all having any familiarity with transportation conditions that tank cars must, and do, in the course of everyday transportation, move through populous communities. They must often be hauled through the business districts and sometimes through the residential sections of towns and cities. Often they stand for a period of time upon yard or storage tracks. Whether in motion or at rest there is an undefined danger zone about them. The record is replete with citations of instances in which serious accidents have resulted from the use of lighted lanterns in their vicinity. Some accidents have resulted from carelessness in the presence of the peculiar danger involved, and some have occurred despite the exercise of reasonable care and caution. Explosions of gasoline have occurred by the ignition of fumes escaping from cars 75 to 150 feet away. Fires and explosions have occurred through the ignition of escaping fumes by a switch lamp over or past which the car was being moved.

As a practical measure of dealing with the situation the Master Car Builders' Association organized a tank car committee, with a membership representative of carriers, builders, and shippers, to study the problems of construction and make recommendations. Making allowances for the generally recognized condition of equipment then in use, this committee recommended as the minimum requirement, consistent with the purpose of increased safety, that cars then in existence should be required to stand a 40-pound interior pressure test, and that cars to be constructed thereafter should be required to stand a 60-pound pressure test, that being one-fourth of the bursting

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pressure or ultimate strength of 240 pounds prescribed for the tank car shell. The 60-pound interior pressure test has been one of the required specifications of the master car builders since 1903, modified by the further and more recent requirement that the test must be made by cold-water pressure.

While complainants do not seriously question that, of several feasible methods, the cold-water pressure test is a proper one and the most efficient to determine the tightness of a tank, they do contend that the 60-pound degree of pressure is no more efficient than a less degree would be, and that the greater pressure puts a strain upon a tank and tends to cause leaks; that there is no more danger of leakage from a 40-pound tested tank than from one which has been tested to 60 pounds.

The complaint avers that 20 pounds would be a reasonable maximum pressure test. Complainants' witnesses differed greatly in their testimony, however, as to the maximum pressure test necessary to insure safety. None of them conceded any necessity for a higher test than 40 pounds per square inch. Others thought that tests ranging from 20 to 32 pounds would be sufficient.

Complainants declare that 95 per cent of leakages result from rough handling. They say that the problem of keeping tank cars in safe condition is more of an operating than a mechanical one; that while 60 pounds would be a reasonable requirement as the car leaves the shop new, it is not reasonable after five or ten years, because rough handling and deterioration in the material, which begins as soon as the tank cars go into service, render the shell less able to stand the 60-pound test than when new.

Upon the part of defendants it was admitted that the 60-pound figure was arbitrarily fixed, but, they assert, necessarily so. They point out that the federal regulations require locomotive boilers to have an ultimate strength of four times the working pressure. The 60-pound requirement is designed to take care of the known strains and, so far as possible, of the unknown strains such as result from the shocks and blows that cars must get.

The real purpose of the interior pressure test is not, as complainants apparently conceive, to insure that the tank will withstand an interior pressure of 60 pounds per square inch developed by expansion of the contents or the surging of the liquid when the car is in motion, but is largely to secure a degree of strength and firmness sufficient to withstand the inevitable shocks of ordinary transportation. The ultimate purpose of the test is to detect any weakness in the tank and to guard against dangers resulting from the use of those that may be unsubstantial.

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Practically all members of the refiners' association are likewise members of the National Petroleum Association, the moving complainant in this case, and are the owners or lessees of the tank cars in which their shipments are transported. Previous to the hearing, inquiries were addressed by the secretary of the refiners' association to shippers in the midcontinent field, whether members of the refiners' association or not, seeking information from each shipper as to the number of cars owned by it, the original cost, present value, point at which safety valves are set, original pressure tests, number of tanks which would not now stand a 60-pound test, accidents resulting from interior pressure, and effect on shippers' business. We have carefully considered the reported statements of the shippers relative to the effect on their investments, their operations, and the estimated time it would take to put in condition their present equipment or procure other cars. Based upon responses to the formulated inquiries, the secretary of the refiners' association had prepared a statement from which he testified that there were at the time of hearing about 5,000 cars owned by midcontinent shippers exclusive of the Standard Oil Company. The reports made covered 3,934 cars, and indicated that the original cost of these 3,934 cars was \$4,085,325.24, and the value at time of reporting \$3,721,931.33.

The witness testified that the reports indicated that 1,422 cars would stand the 60-pound test, that 639 were definitely known to be incapable of standing the test, and the remainder doubtful. The reports were merely unsworn statements. None of the makers appeared as witnesses. Accepting the statement based upon the reports for what it is worth, it covers a total of 3,934 cars. As we compute it, however, there were 2,792 cars reported as then capable of standing the 60-pound test, instead of 1,422, as stated by the witness. Only 584 are definitely shown as unfit to stand the test and 556 are doubtful. Various states of efficiency in the cars, as between different owning and shipping concerns, are shown, and some would be more seriously affected than others, but the statement indicates, as we understand it, that fully 70 per cent of the cars covered thereby were in condition to stand the test at that time.

The average cost of a tank car, new, ranges from \$900 to \$1,200; of a new tank, including freight cost to refiners in the midcontinent field, about \$400. Tanks unable to stand the prescribed test would not necessarily be relegated to the scrap heap. They could be used for the transportation of other commodities and might be put in condition for the transportation of inflammable liquids by riveting and recalking. The estimates of cost of compliance with the rule as made by various shippers in their reports to the refiners' association range from \$400 per car up to the full value of new cars to replace the old,

and no allowance is made for value of old cars. Such estimates are of questionable value.

Complainants argue:

(1) That it is the legal duty of defendants to furnish the instrumentalities for the transportation of these commodities. This proposition was raised only upon brief and argument. The evidence affords no basis for its consideration, much less for a finding or expression of opinion. The sole issue here considered is the reasonableness of a rule that applies to all tank cars by whomsoever owned or operated.

(2) That the rule is unreasonable because the 60-pound pressure specification is unnecessary; that it is unreasonable because interior pressure evolved from the contents of the tanks can not be developed to a danger point without being relieved by the safety valves. This contention, predicated upon a misunderstanding of the purpose of the test, is answered by the fact, already stated, that the test was not prescribed with the single purpose to have tanks withstand interior pressure evolved from the contents.

(3) That the rule is futile as a measure for the prevention of accidents in the future because, as asserted by complainants' witnesses, the majority of accidents result from carelessness on the part of the carriers' employees. There is of necessity a considerable hazard in the transportation of these commodities. The degree of that hazard may be affected not only by the care or lack of care in handling, but also by the character and the condition of the cars used in transportation. It is the duty of both carriers and shippers, not only with respect to their obligations one to the other, but in consideration of the general public interest, to take no avoidable risks. The reasonableness of the requirement for a 60-pound pressure test is supported by the experiences of the Master Car Builders' Association extending over several years. It is not presumed to be infallible, but it is testified that it is the best and most effective test known to construction engineers. It is affirmed by the experience, experiments, and study of an unquestionably well qualified expert, the chief inspector of the Bureau of Explosives. Nothing established by the evidence of record appears in derogation of its propriety and presumed efficiency as a safety measure.

With reference to the cost to shippers of enforcing the rule, complainants' counsel argues that it is not possible to secure the object sought by the regulation without impairing essential rights and principles, in proof of which he cites the estimates of cost submitted by some of the shippers in response to inquiries addressed to them by the refiners' association. These shippers were not witnesses, and no one testified to the truth or accuracy of these estimates. Considered in all its aspects, the evidence leaves no doubt that the estimates

are exaggerated. The tanks which will not stand the test may, in many cases, undoubtedly be brought into condition to do so. Failing to meet the test, they may still be available for the transportation of other commodities to which the regulation does not apply. In any event, they should not be permitted to remain in a service where there is such extreme danger. There has been no failure of notice to interested parties nor lack of sufficient time to bring into conformity with the regulation equipment which may still be fit for the service.

The rule is in the nature of a federal police regulation designed to minimize as much as possible the dangers attending the transportation of these commodities and to promote an increase of safety to life and property by requiring efficient equipment. Its formulation by the Commission is pursuant to the mandate of the statute, and it tends to uniformity and nondiscriminatory methods and requirements. In our opinion, it is not shown to be unreasonable. It is not shown that it will impose any unjust burden upon owners and operators of tank cars. An order dismissing the complaint will be entered.

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No. 7830.

NORTHERN COLORADO COAL COMPANY

v.

COLORADO, WYOMING & EASTERN RAILWAY COMPANY
ET AL.

Submitted October 28, 1915. Decided February 15, 1916.

The complainant alleges that the defendants' rates on soft coal from Coalmont, Colo., to points on their lines in Colorado, Wyoming, Nebraska, and Kansas are unreasonable and unjustly discriminatory as compared with the rates to the same destinations from Hanna, Wyo. It further alleges that no joint rates are published from Coalmont to stations on the lines of some of the defendants while such joint rates are published from Hanna to these stations, and that the complainant is thereby subjected to unjust discrimination; *Held*, (1) That the rates from Coalmont are not shown to be unreasonable *per se*; (2) that the rates from Coalmont are shown to be unjustly discriminatory to the extent that they exceed by more than 25 cents per net ton the rates contemporaneously maintained from Hanna; (3) that defendants should establish through routes and joint rates from Coalmont to stations on the Chicago & North Western Railway, the Colorado, Kansas & Oklahoma Railroad, the Missouri Pacific Railway, and the Chicago, St. Paul, Minneapolis & Omaha Railway.

Carle Whitehead and *A. L. Vogl* for complainant.

Henry McAllister, jr., for Colorado, Wyoming & Eastern Railway Company.

H. A. Scandrett for Union Pacific Railroad Company.

R. H. Widdicombe for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

F. G. Wright for Missouri Pacific Railway Company.

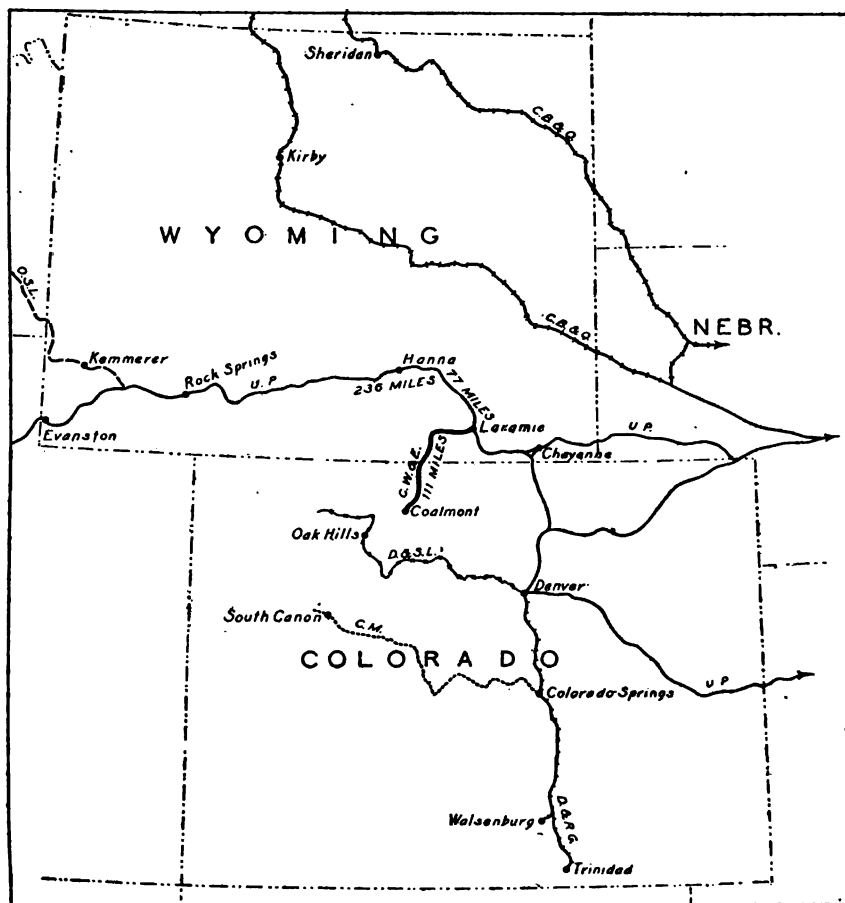
REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant, a Wyoming corporation, owns and operates a coal mine at Coalmont, Colo., the southern terminus of the Colorado, Wyoming & Eastern Railway. Its complaint, filed March 12, 1915, alleges that the rates on coal from Coalmont to points on defendants' lines in Colorado, Wyoming, Nebraska, and Kansas are unreasonable and unjustly discriminatory to the extent that they exceed the rates from Hanna, Wyo. It is further alleged that no joint through rates are published from Coalmont to stations on the lines of some of the defendants, while such joint through rates are published from Hanna to the same stations, and that the complainant is thereby subjected

to unjust discrimination. The Rocky Mountain Fuel Company, which operates coal mines in other parts of Colorado, was permitted to intervene, but took no active part in the proceeding.

The complainant produces a high grade of lignite coal, similar to that which is produced at Hanna. Its principal markets are in northern and eastern Colorado, where it competes with the lignite coal from the northern Colorado field; at Cheyenne, Wyo., and



vicinity, where it competes with the coal from Hanna and Rock Springs, Wyo.; and in southern Nebraska, where it comes in competition with the lignite mines at Sheridan and Kirby, Wyo.

The distance from Coalmont to Laramie, at which point the Colorado, Wyoming & Eastern Railway connects with the Union Pacific Railroad, is 111 miles. The distance from Hanna to Laramie is 77 miles. Rock Springs, Wyo., is located 236 miles west of Laramie on the main line of the Union Pacific Railroad. To the destinations

east of Laramie, therefore, the distances from Coalmont are 34 miles greater than the distances from Hanna, and 125 miles less than the distances from Rock Springs. The coal produced at Rock Springs is a high-grade bituminous variety similar to that produced in the Walsenburg district, and brings from 75 cents to \$1 more per net ton than the complainant's coal. The various producing points are shown on the accompanying map.

The Colorado, Wyoming & Eastern Railway, which was extended to Coalmont in the latter part of 1911, traverses a sparsely settled region. Coal, lumber, hay, live stock, and general merchandise constitute its principal tonnage. The coal mine owned by the complainant is the only one located on the line of this carrier. The Colorado, Wyoming & Eastern Railway owns no coal cars, all of the coal cars used by it being obtained from the Union Pacific Railroad. The Union Pacific switches the empty cars to the receiving track of the Colorado, Wyoming & Eastern at Laramie. The latter carrier hauls the empty cars from Laramie to Coalmont, performs the necessary switching at the mine, and returns the loaded cars to the Union Pacific at Laramie.

The illogical construction of the rates from Coalmont, Hanna, and Rock Springs to the destinations here involved will be seen from the following statement. The rates from Rock Springs are generally the same as the rates from Walsenburg, Colo. To a number of destinations in Wyoming and Colorado the rates from Coalmont are from 15 cents to 75 cents per net ton lower than the rates from Rock Springs. To other stations in Wyoming, Colorado, and Nebraska the rates from Coalmont and Rock Springs are the same. To still other destinations in Nebraska the Coalmont rates are 25 cents per net ton higher than the Rock Springs rates. In nearly all cases the rates from Coalmont are materially higher than the rates from Hanna, but the differentials vary from 40 cents to \$1 per net ton. The only explanation given by the defendants for this illogical adjustment is that numerous reductions have been made in the rates from some mines without reducing the rates from other mines. Effective June 30, 1915, the Union Pacific Railroad filed supplement No. 1 to its tariff I. C. C. No. 2737, in which it proposed to increase the rates on soft coal, other than slack, from Hanna to a large number of the destinations involved in this proceeding. It is said on behalf of the Union Pacific Railroad that the principal object of the proposed increases was to "iron out" some of the inconsistencies in the rate adjustment by making the rates from Hanna less than the rates from Rock Springs by uniform differentials. The supplement carrying the proposed increased rates was suspended, however, and the rates ordered canceled, in *Coal from Colorado and Wyoming Mines*, 37 I. C. C., 430.

The following table, compiled from one of the complainant's exhibits, shows the rates on lump coal and the distances from Coalmont, Hanna, and Rock Springs to representative markets in Colorado, Wyoming, Kansas, and Nebraska:

To—	From Coalmont.		From Hanna.		From Rock Springs.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Laramie, Wyo.....	111	\$1.50	77	\$1.50	236	\$2.25
Grasley, Colo.....	222	2.00	188	1.80	247	2.50
Denver, Colo.....	275	2.00	241	1.60	400	2.50
Sterling, Colo.....	322	2.85	288	2.25	447	3.00
Pine Bluff, Wyo.....	211	2.75	177	1.85	336	2.75
Sidney, Nebr.....	270	3.00	236	2.25	396	3.00
North Platte, Nebr.....	393	3.50	359	2.50	518	3.50
Kearney, Nebr.....	488	3.75	454	3.00	613	3.50
Fremont, Nebr.....	657	4.00	623	3.50	782	3.75
Kansas City, Mo.....	915	4.00	881	3.50	1,040	4.00
Topeka, Kans.....	848	4.00	814	3.50	973	4.00

The Colorado, Wyoming & Eastern Railway, though named as the principal defendant, favors the establishment of joint rates from Coalmont on the basis sought by the complainant, but it has been unable to agree with the Union Pacific Railroad as to the amount of the rates or the divisions which the participating carriers should severally receive. The principal objection of the Union Pacific Railroad to establishing the same rates from Coalmont as from Hanna is that the distance from Coalmont is 34 miles greater, the operating conditions on the Colorado, Wyoming & Eastern Railway somewhat less favorable than on the main line of the Union Pacific, and a two-line haul required.

In dealing with the rates on coal from Colorado and Wyoming mines to stations in Kansas and Nebraska, it is necessary to take a comprehensive view of the whole rate structure. The striking feature of this adjustment is that both points of origin and points of destination have been blanketed under common rates, the carriers disregarding differences in distance amounting to hundreds of miles, and similarly ignoring differences in operating conditions. The "key" rate from coal mines in this territory to stations on and west of the Missouri River is the rate from Walsenburg, the rates from most of the Colorado mines being either the same as the Walsenburg rates or bearing a fixed relation thereto. The rates from Trinidad, Colo., for example, are 25 cents per net ton higher than the rates from Walsenburg. The Union Pacific Railroad and the Chicago, Burlington & Quincy Railroad voluntarily extended the Walsenburg rates to Oak Hills, Colo., located 195 miles west of Denver on the Denver & Salt Lake Railroad, in spite of the unusual difficulties of operation on the latter road. *Coal Rates from Oak Hills, Colo.*, 30 I. C. C., 505. Moreover, the Union Pacific Railroad has voluntarily established the

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Walsenburg rates not only from Rock Springs but from Kemmerer Wyo., 85 miles west of Rock Springs on the Oregon Short Line, and from Evanston, Wyo., 115 miles west of Rock Springs on the Union Pacific. The tendency toward blanketing the rates from all the mines is due partly to the demand from producers for as favorable rates as their competitors enjoy, and in part to eagerness of the carriers to participate in the coal traffic.

The defendants contend that because of the unfavorable operating conditions on the line between Coalmont and Laramie, the additional distance of 34 miles, the fact that an extra line haul is involved, and the fact that the Union Pacific furnishes the cars for this traffic, the rates from Coalmont should be placed on the Rock Springs basis. We can not agree with this contention. Not only are the distances from Rock Springs uniformly 125 miles greater than those from Coalmont, but, as observed above, the Rock Springs rates apply from Kemmerer and Evanston, 85 miles and 115 miles west of Rock Springs. At the hearing in *Coal from Colorado and Wyoming Mines, supra*, the defendants submitted a schedule of rates in which they proposed to make the rates from Rock Springs to points in Nebraska west of and including North Platte higher by 75 cents per net ton than the rates from Hanna and to destinations east of North Platte 50 cents per net ton higher. If the Rock Springs rates were applied from Coalmont, therefore, the rates from Coalmont would be, according to this schedule, 50 cents or 75 cents per net ton higher than the rates from Hanna. The record shows that these differentials would be excessive.

No joint rates are published from Coalmont to stations on the Chicago & North Western Railway, the Colorado, Kansas & Oklahoma Railroad, the Missouri Pacific Railway, or the Chicago, St. Paul, Minneapolis & Omaha Railway. Joint rates are published from Hanna to stations on these lines. These carriers are defendants in this proceeding, and the complainant alleges that the failure of the defendants to establish joint rates from Coalmont has resulted in unjust discrimination. The defendants do not deny that the complainant is entitled to the establishment of reasonable joint rates from Coalmont to the destinations on the lines of these carriers, their contention being merely that the rates from Coalmont should be higher than the rates from Hanna because of the unfavorable location of the complainant's mine.

Upon consideration of all the facts of record we are of opinion and find that the defendants' rates on soft coal from Coalmont via Laramie to stations on the defendants' lines in Wyoming, east of Laramie, in Colorado, Kansas, and Nebraska are unjustly discriminatory to the extent that they exceed the rates contemporaneously in effect

from Hanna to the same stations by more than 25 cents per net ton. We further find that the defendants should establish through routes and joint rates from Coalmont to stations on the lines of the Chicago & North Western Railway Company, the Colorado, Kansas & Oklahoma Railroad Company, the Missouri Pacific Railway Company, and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, to which joint rates are published from Hanna, and that such joint rates should not exceed by more than 25 cents per net ton the rates contemporaneously in effect from Hanna to the same stations. The complaint contains an allegation that the rates from Coalmont are unreasonable *per se*, but the evidence was addressed almost entirely to the relationship between the rates from Coalmont and Hanna, and it is clear that the complainant is interested rather in that relationship than in the absolute amount of the rates.

An appropriate order will be entered.

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No. 7527.

DETROIT COAL EXCHANGE ET AL.

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

No. 7527 (Sub-No. 1).

SAME

v.

GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.

Submitted May 13, 1915. Decided February 18, 1916.

Upon complaint that the rules and charges governing the weighing and reweighing of carload freight in Detroit, Mich., are unreasonable and unduly preferential, *Held:*

1. That the Commission has jurisdiction of the weighing service, when the freight is moved in interstate commerce.
2. That it is the duty of the delivering carrier, upon reasonable request, to reweigh carload freight which has been transported in interstate commerce.
3. That the present charges for this service in Detroit, Mich., are unjust and unreasonable. Just and reasonable charges prescribed for the future.
4. That the inability of carriers participating in the interstate transportation of a car to agree upon their respective assumptions of costs for reweighing when such reweighing develops a shortage in excess of the limit of tolerance, can not be used to increase charges against the shipper.

H. H. Smith for complainants.

E. S. Ballard for Michigan Central Railroad Company.

L. C. Stanley for Grand Trunk Western Railway Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The complaints in these cases, which involve the same questions, were filed by two voluntary associations of shippers engaged or interested in the business of handling coal and building materials, and attack the charges and rules of defendants for weighing and reweighing carload freight in the city of Detroit, Mich. It is alleged that the present charges, which represent increases over those in effect prior to November 15, 1914, are unjust, unreasonable, and unjustly discriminatory.

The charges are as follows:

Rates per car for weighing or reweighing freight.

	Effective Nov. 15, 1914.	Prior to Nov. 15, 1914.
On private scales at the industry after placement for loading or unloading.....	\$1.50	\$0.25
On railroad scales:		
(a) Before placement for loading or unloading.....	2.00	1.00
(b) After placement 'or loading or unloading.....	19.00	1.00
(c) En route to destination.....	11.00	1.00
(d) Empty car after unloading.....	3.00	1.00
(e) Empty car after unloading.....	2.00	1.00
(f) Loaded car when weight secured is not used for billing purposes.....	2.00	1.00

¹Michigan Central.

²Grand Trunk.

The rule particularly complained of reads as follows:

When inbound freight is weighed or reweighed by a switching road (not participating in the freight rate), the above charges will be assessed regardless of any variation in weights, and will be in addition to the regular switching charge. If no change is made in billed weight, the charge will be against the party or road requesting weighing; when change is made in billed weight, the charge will be made by the switching road against the delivering road.

Practically all of the evidence introduced by complainants related to the reweighing of cars of coal after placement for unloading. Coal is transported in open cars and shortages in weight are frequent. These shortages are due to transfers in transit, to the use of cars with hopper bottoms, to the falling off of the top of the load, and to pilferage. An investigation made by complainants showed that most of the shortages are due to pilferage, either in transit or in the Detroit terminals, which extend for a distance of 22 miles north and south along the Detroit River.

If after a car has been delivered to an industry or team track the consignee thinks there is a shortage in excess of the tolerance, which is 1 per cent of the billed weight with a minimum of 500 pounds, he orders it reweighed. At the present time this order for reweighing must be given through the line-haul carrier, as the switching carrier is not known in the transaction so far as the consignee is concerned. After the reweighing the charges therefor are assessed according to the rates and rule quoted above.

The jurisdiction of this Commission to pass upon the weighing charge is challenged. The weighing service, although performed after the initial physical delivery of the car, is nevertheless an incident of the transportation service, especially as the weight secured is used in the computation of freight charges and in the settlement of claims for shortage. When the transportation is interstate some of its incidents, such as receipt, delivery, storage, demurrage, car service, and weighing, assume an interstate character. As the act to

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regulate commerce applies to "all services in connection with the receipt, delivery, * * * and handling of property transported," our conclusion is that we have jurisdiction of the weighing service. *Wilson Produce Co. v. Pa. R. R. Co.*, 14 I. C. C., 170, 173; *C., R. I. & P. Ry. Co. v. Hardwick Elevator Company*, 226 U. S., 426; *New England Coal & Coke Co. v. N. & W. Ry. Co.*, 22 I. C. C., 398.

It is also suggested that where the actual delivery of the car is made by a switching carrier no duty rests upon that carrier to reweigh the car upon request. This contention is also answered by section 1 of the act which, in connection with the instrumentalities and services comprehended in the term "transportation," makes it the duty of every carrier subject to the act "to provide such transportation upon reasonable request therefor." If a switching carrier participates in the through movement of a car, a reweighing of the car is included in the transportation which it is its duty to perform upon reasonable request.

The principal complaint herein is against the charge for reweighing a car after placement at the industry or team track. The record shows that approximately 99 per cent of the cars of coal reweighed are reweighed after placement. The present charges for this service are made up of the industrial switching charge from the industry or team track to the scale, a charge of \$1 for the weighing operation exclusively, and the industrial switching charge back to the industry or team track. In Detroit the industrial switching rate of the Grand Trunk is \$5, and of the Michigan Central, \$4 per car, so that the present charges for the complete reweighing service are \$11 and \$9 per car, respectively. As these charges were increased November, 1914, the burden of proof to show them just and reasonable is on defendants. In assuming this burden both attempted, although by different methods, to prove that the charges are reasonable based on the cost of the service.

The Grand Trunk addressed its evidence to the charge as a whole. The total expenses of its Detroit terminals were first ascertained. These expenses included interest at 5 per cent on the value of the exclusive freight facilities and $2\frac{1}{2}$ per cent on the value of the facilities used jointly for freight and passenger business; all maintenance charges against exclusive freight facilities and a wheelage proportion of those against joint facilities; operating expenses on a wheelage basis; an arbitrary addition of 13 per cent for overhead expenses, which is the percentage of overhead expenses on the whole system; and taxes distributed according to use of the various facilities. Without disclosing the separate items of the total, or how they were computed, the total expenses for a period not stated was given as \$975,672. It was then estimated that the loaded cars passing

through Detroit were handled three times and the loaded cars switched in Detroit four times. Having ascertained the total number of loaded cars passing through and the total switched locally, these totals were multiplied by three and four, respectively, to secure the total number of "handlings," which was 1,136,320 for the undisclosed period. The total expenses were then divided by this number of "handlings," and the quotient, 85.8 cents, is claimed to be the average cost per "handling." The witness who presented these figures was uncertain as to where a "handling" began and ended, but he stated that a reweighing switching service was comparable to a local switching service. Nine "handlings," four to, one at, and four from the scale, at 85.8 cents per "handling," is \$7.72, which, added to \$1.35, car detention for three days, at 45 cents per day, gives a total of \$9.07, which is claimed to be the average total cost per car.

Many fundamental defects in this method of cost analysis could be pointed out, but the failure to count the empty cars in arriving at the total number handled is sufficient justification for rejecting it. A car to be reweighed is not properly chargeable with any empty movement. It is already at the industry or team track and its empty movement therefrom after the reweighing operation is included in the road-haul freight rate. On the other hand, hundreds of empty cars pass through the terminals, hundreds of inbound loaded cars are switched empty from private sidings, hundreds of empty cars are switched to empty sidings for outbound loading, not to mention the many local movements between industries which involve empty movements to and from the industries. It is therefore clear that the figure 85.8 cents per "handling," including, as it does, the expense of handling the empty cars, can not be applied to a reweighing movement.

The Michigan Central attempted to justify separately the three factors making up its charge of \$9 per car. As most of the evidence related to the \$1 factor for the weighing operation, it will be considered first. A witness estimated that the weighing and necessary switching incident thereto on seven cars at a time, 30 minutes at $8\frac{1}{2}$ cents a minute, cost 36 cents per car; delay to the car, 12 to 24 hours at 45 cents per day, 34 cents; and reclassifying the car after the weighing operation, \$1; or a total of \$1.70 per car. The $8\frac{1}{2}$ cents a minute for weighing and switching is made up of one-half cent for operating a railroad scale and 8 cents for a switch engine. The item of coal in the switch engine cost is based on the average consumption of the type of locomotive used in the Detroit terminals, but, although it was admitted that the amount of coal consumed by a locomotive depends largely on the number of cars handled, no testimony was presented showing that the number handled by such engines at one time

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averages more or less than seven, the average number handled by the engine assigned to the weighing service. The delay of 12 to 24 hours is figured from the time the car leaves the classification yard until it returns, and consequently includes the time consumed in switching the car to and from the scale track. The maximum delay which can be charged to the weighing operation proper is 30 minutes, as the factor of \$4 from and to the industry or team track covers the switching and delay to and from the scale track. For this reason the item of \$1 for reclassifying the car is not assignable to the weighing service proper, as it is a service incident to the movement from the scale track to the industry or team track.

In support of the reasonableness of charging the industrial switching rate of \$4 to the scale and from the scale it is contended that the car is delayed four days, which, at the regular per diem rate of 45 cents per day, is \$1.80; and, further, that the average cost of a switching movement in Detroit is \$2.94 per car. The witness who testified on the question of delay admitted that he had no recent figures to support the average of four days. He merely estimated that a car is delayed four or five days in an industrial switching movement and expressed the opinion that the reweighing operation consumed about the same length of time, figuring from the time the order for reweighing is received, not from the time the car is actually taken from the industry, until the car is returned. On cross-examination he changed his estimate to "perhaps two or three days," and afterwards added the qualification "unless a special request is made to get the car back in 24 hours." With respect to the average cost of a switching movement the testimony was equally inconclusive, although the charge therefor is apparently not challenged. No explanation was given as to how the estimate of \$2.94 per car was arrived at except that it is an average of \$2.85, the estimated average summer cost, and \$3.03, the estimated average winter cost. It does not appear that the loaded cars were charged with the cost of moving the empties nor what average haul is comprehended in the above average cost. As there is no extra empty movement in connection with a car to be reweighed, and the length of the average reweighing movement is comparatively short, the scales being located at convenient places throughout the terminals, it does not necessarily follow that the cost of an average industrial switching movement and all the services incident thereto would fairly represent a mathematically determined percentage of the cost of an average reweighing movement.

Upon all the facts of record we are of opinion and find that defendants have not justified the present charges for reweighing cars after placement. As the evidence submitted in justification of the

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other weighing charges involved was merely part of that herein discussed and found to be inconclusive, it follows that the present charges for the other weighing movements have not been justified. When a carrier elects to justify increased rates by attempting to show the cost of the service performed the formulæ and methods used must be fully disclosed. It is not sufficient to state that an average switching movement costs a specific sum, that a certain movement consists of a given number of "handlings," and that the value of terminals used is a given amount.

The evidence of record furnishes no basis on which to fix with absolute precision specific rates for the several weighing movements involved. Complainants concede that the rates in effect prior to November 15, 1914, were merely nominal rates, and that some increase therein might reasonably be made. A consideration of the several links in the average reweighing movement after placement as compared with the average industrial switching movement, however, will afford a foundation for prescribing approximately a proper relation of these charges. The several short operations which are necessary to take a car to and from the scale constitute one complete service, just as the several operations necessary to move a car from one industry to another constitute one complete service. The weighing operation is merely one link in the weighing movement, and is not unlike a number of individual operations incident to the average switching movement. While there are exceptions in both cases, the operations may be summarized as follows:

WEIGHING CAR AFTER PLACEMENT.

1. Switching car off industry or team track.
2. Movement to classification yard.
3. Switching to scale track.

3(a). Switching car on scale track, past the scale to track containing cars going in direction of industry or team track.

4. Switching the car to region of industry or team track.
5. Placement on industry track.

SWITCHING CAR FROM ONE INDUSTRY TO ANOTHER.

1. Switching car off industry track.
2. The same.
3. Switching to track containing cars going in direction of destination industry.
4. The same.
5. The same.

The table of comparative movements above shown assumes that the loaded car intended for industrial switching is at the industry of origin, and takes no account of the out movement of the empty from industry of destination. Where two additional movements are required for the empty in and the empty out there are seven

movements as against six in favor of the industrial switch, and the distances in the latter case are presumably greater. Thus it appears that the only substantial difference in the two movements is described under 3(a), which is an additional link in the weighing movement.

On the other hand, there are many incidental services comprehended in the industrial switching charge which are not included in the reweighing charge. The industrial switching charge covers the movement of an empty car to the originating industry, and the movement of an empty car from the industry of destination; as before stated, the reweighing charge covers no such extra empty movements, as the cars are already at the industry, and the empty movement therefrom after reweighing is included in the line-haul freight rate. The industrial switching charge also includes two days' free time for loading and two days' free time for unloading; the reweighing charge includes no additional free time. The industrial switching carrier is liable to loss and damage through the terminals; the carrier which performs merely a switching service in connection with the car to be reweighed appears to disavow responsibility for loss and damage in the process. The industrial switching movement is always to a definite point, and this point in extreme instances may be as far as 22 miles away; the reweighing movement may be to any one of several scales distributed throughout the terminals and is therefore comparatively short. Finally, a car moving in industrial switching service would probably have to be weighed if the destination industry claimed a shortage. We are consequently of opinion and find that the present charges of defendants for reweighing car-load freight after placement at the industry or team track are unjust and unreasonable to the extent that they exceed 75 per cent of the industrial switching rates contemporaneously in effect. On this basis the charge for this service will be \$3 per car on the Michigan Central and \$3.75 per car on the Grand Trunk, as compared with the prior rate of \$1 per car on both lines, and as compared with the present weighing charge of \$9 per car on the Michigan Central and \$11 per car on the Grand Trunk.

The record does not contain sufficient evidence on which to fix or indicate a proper relation of rates for the other weighing services involved, but defendants will be expected to line up those rates with the rates above prescribed. There remains to be considered the reasonableness of the rule hereinbefore referred to.

Of the industries in Detroit, 90 per cent are located on the tracks of the Grand Trunk and Michigan Central. Among the carriers reaching Detroit but having no terminals in the city is the Detroit & Toledo Shore Line, running from Toledo to Detroit. In order that this line may effect delivery of coal consigned to Detroit, it is

necessary to employ a line having terminals in the city. As the defendants serve 90 per cent of the industries, they are generally the delivering lines. On cars delivered to team tracks or industries not located on the line of the carrier which brings the coal to Detroit the switching charges of the switching road are absorbed by the line-haul carrier. The Detroit & Toledo Shore Line is therefore compelled to absorb \$4 and \$5 per car from its gross earnings, which average about \$16 per car from Toledo to Detroit. At the present time the reweighing charge, in case the freight charges are collected on basis of the billed weight, is assessed against the line-haul carrier whether the shortage occurs on its line or that of the switching carrier.

The switching carriers, defendants herein, take the position that they act merely as delivering agents for the line-haul carriers and, inasmuch as the switching charges are their only earnings, they will assume no responsibility for shortages. The Detroit & Toledo Shore Line, which is one of the heaviest coal carriers to Detroit, asserts that it will not pay the reweighing charges under any circumstances. The switching carriers, defendants herein, accordingly decline in this situation to reweigh a car unless the consignee guarantees the charges. This is the basis for the complaint against the rule.

The situation thus presented is tantamount to a dispute between carriers regarding divisions. If the reweighing develops a shortage less than the tolerance, the shipper should pay for the extra service performed; if the reweighing develops a shortage in excess of the tolerance, no charge should be made against the shipper. Whether, in the latter instance, all or part of the reweighing charge should be paid by the line-haul carrier is a matter of no concern to the shipper. That is a question to be decided by the carriers participating in the transportation, and their inability to agree should not be used as an excuse to increase the charges to be paid by the shipper. No opinion will be expressed at this time as to how the reweighing charge, when a shortage in excess of the limits of the tolerance appears, should be divided as between defendants and their line-haul connections, but if they are unable to agree among themselves it may be brought to our attention.

An order requiring the establishment and maintenance of charges for reweighing cars after placement on basis of 75 per cent of the industrial switching charge contemporaneously in effect will be entered.

HALL, *Commissioner*, dissents.

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No. 7611.

KUEHNE-CHASTAIN COMMISSION COMPANY ET AL.

v.

GREEN BAY & WESTERN RAILROAD COMPANY ET AL.

Submitted September 18, 1915. Decided February 18, 1916.

The defendants' tariffs, as herein described, interpreted as removing potatoes from the classification rating and sustaining as lawful throughout the period involved the specific commodity rate published therein.

J. P. Duffy for complainants.

J. M. Souby and *G. H. Hamilton* for Kansas City Southern Railway Company.

R. C. Sanders for Chicago, Milwaukee & St. Paul Railway Company.

F. B. Clark for Missouri Pacific Railway Company.

A. F. Cleveland for Chicago & North Western Railway Company and Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The question presented for our determination on this record is, What was the lawful rate applicable on shipments of potatoes moving during the period from September 18, 1911, to September 5, 1912, from certain producing points in the state of Wisconsin to the points of destination involved in this proceeding in the states of Missouri and Kansas? Charges were collected on the basis of a commodity rate of 25 cents, which the defendants contend is the rate that should have been assessed under their published tariffs. The complainants, on the other hand, allege that the class C rate of 22 cents per 100 pounds was the lawful rate, and they are here asking reparation on that basis in the amount of approximately \$8,000. The issue is one of tariff interpretation.

The complainants, some 22 in number, are engaged in the produce business either at the points of origin or destination mentioned of record. Of the former, Reedsburg, on the Chicago & North Western Railway; Arnott, on the Green Bay & Western Railroad; Westfield and Custer, on the Minneapolis, St. Paul & Sault Ste. Marie Railway; and Kilbourn, on the Chicago, Milwaukee & St. Paul Railway, may be taken as typical; while Kansas City is a representative

destination point. Throughout the period covered by the complaint there was provided in a joint through freight tariff of the western trunk lines between the points of origin and destination here under consideration a commodity rate of 25 cents per 100 pounds. Class and commodity rates on traffic between Wisconsin points and destinations in Missouri and Kansas were also carried in other western trunk line tariffs effective February 1 and August 1, 1912. Each of these tariffs showed on its face that it was governed by the western classification and also by agent Hosmer's exceptions thereto, the latter, however, taking precedence over the classification. Potatoes in carloads take class C rates under the western classification, but under the Hosmer exceptions they were shown throughout the period in question as taking "potato rates."

Each of Hosmer's exceptions to the classification contained the following rule:

Articles.	Rating.
Potatoes, in straight carloads, or in mixed carloads with other vegetables, rated class C in western classification.	Potato rates.

Each of the western trunk line tariffs mentioned above as having become effective on February 1 and August 1, 1912, under the heading "index to commodities," carried a provision that—

The following list enumerates only such articles as are given a specific rate; * * * articles not specified will take class rates.

Thereafter, in the text specifying certain commodities, is found:

In tariff—	Commodity.	Item No.
1-E, I. C. C. No. A-207	Potatoes. See W. T. L. I. C. C. No. 414, supplements thereto and reissues thereof.	.....
1-F, I. C. C. No. A-243	Potatoes. See also W. T. L. I. C. C. No. 414, supplements thereto and reissues thereof.	888
1-G, I. C. C. No. A-313	Potatoes. See also W. T. L. I. C. C. No. 414, supplements thereto and reissues thereof, and exceptions shown in item 345 herein.	345, 888

It is enough to say of item 888, referred to in the two latter tariffs, that it concerns rates not in question here. But item 345 of the last-named tariff bears directly on the question, for it contains this provision:

Exception.—Class rates shown in this tariff will not apply on potatoes, carloads, from points of origin to points of destination named in J. T. F. T. W. T. L. No. 596, W. T. L. I. C. C. No. 414, supplements thereto and reissues thereof.

This exception was accompanied by the notation "denotes advance." Each of these tariffs also showed the following rule for the "alternative use of rates":

Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be), except when and in so far as alternative use of class and commodity rates that are contained in separate sections of this tariff is specifically authorized herein.

In the class-rate section of this series of tariffs is found a class C rate of 22 cents per 100 pounds, applicable from these Wisconsin points of origin to Kansas City throughout the entire period from September 18, 1911, to September 5, 1912, and without restriction as to routing.

Such being the state of the tariffs, the complainants contend that shipments not specifically routed by the shippers by way of the particular route over which the commodity rate of 25 cents governed should have been transported by the defendant carriers over other routes by which the complainants say the class rate of 22 cents lawfully applied on carloads of potatoes. It is on such shipments and on this basis that they press their claim for reparation, the carriers having collected charges at the commodity rate of 25 cents per 100 pounds for the service.

There can be no doubt that with the effectiveness on August 1, 1912, of western trunk line tariff 1-G, I. C. C. No. A-313, the class rates therein provided, including the 22-cent class C rate involved here, could not apply on these shipments of potatoes. This was finally admitted by complainants' chief witness. Therefore it is unnecessary further to consider any shipments moving on August 1, 1912, or thereafter. As to the earlier shipments, we think the tariff provisions above quoted were intended to and were sufficient to remove potatoes from the application of the class C rate. Hosmer's exceptions governed, and these clearly provided that where potato rates had been established they were to govern the potato movement; and commodity rates on potatoes were at that time in effect under western trunk line tariff I. C. C. No. 414. If there be any doubt whatever of the efficacy of those exceptions, it is entirely removed by the commodity index of the series of tariffs mentioned, which expressly states that articles not enumerated in the index will take class rates. Potatoes were enumerated in each such commodity index and specific reference was given to the potato tariff just mentioned. The attention of the shipper seeking potato rates was thus directed to the latter tariff, where the 25-cent rate was clearly shown. Furthermore, the tariff rule already quoted, governing the alternative use of class and commodity rates, permitted such

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use only when the class and commodity rates were contained in the one tariff, that being the western trunk line series above mentioned. These class rates and potato rates were in different tariffs.

It is pertinent to say here that the western trunk line tariff I. C. C. No. 414 referred to was in effect from October 20, 1903, until October 15, 1912, during all of which time its cover showed it as "applying on potatoes, in carloads, * * * from stations in Wisconsin to Missouri River points, Omaha, Nebr., to Kansas City, Mo., inclusive," and also to points in the states of Kansas and Missouri and elsewhere.

It was said by complainants upon the hearing that some of the lines that are parties to the western trunk line tariffs involved in this controversy had already paid overcharge claims on some of these shipments of potatoes, recognizing by such action that the class rate of 22 cents lawfully applied. To this the carriers represented replied that the return of such claim payments, if any had been made, would at once be demanded. Whatever the fact may be in that respect, the law requires that the carriers shall charge nothing less than the lawful rate of 25 cents per 100 pounds on these shipments.

In reaching this conclusion we are not unmindful of the fact that when, on August 1, 1912, the class rates were, in a doubly certain manner, made inapplicable on potatoes, the tariff provision to that effect was marked "denotes advance." Our conclusion, furthermore, is entirely in harmony with our previous finding that this particular commodity rate of 25 cents per 100 pounds is just, reasonable, and not unduly discriminatory, even in the face of the class C rate of 22 cents. See *Murphey v. C., M. & St. P. Ry. Co.*, Docket No. 5464, unreported. In that proceeding, it is to be noted, reparation was sought on the class-rate basis.

Our attention has been called to the fact that this question was before the Commission and settled adversely to the contention of the carriers in *Whiteker Bros. v. C. & N. W. Ry. Co.*, Docket No. 5039, unreported. That report, however, was the result of a very meager record, which did not put all the circumstances and conditions before the Commission and can not be considered as controlling here.

An order will be issued dismissing the complaint.

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No. 5518.
IN THE MATTER OF FREIGHT BILLS.

Submitted March 1, 1915. Decided February 7, 1916.

Freight bills presented to the ultimate consignees of shipments reconsigned in transit ought not to disclose the name of the original consignors; neither should they show the original point of shipment nor the route of movement to the reconsigning point except in instances where the ultimate consignee is required to pay the through charges.

SUPPLEMENTARY REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In the original report herein, 29 I. C. C., 496, the purpose and scope of this inquiry were explained. The form of freight bill there approved and recommended to the carriers had previously been approved in a widely representative conference between the carriers and shippers; and we understand that it has since passed into more or less general use by the rail lines throughout the country. In one respect, however, there is still some doubt and confusion respecting its requirements and at the suggestion of various carriers and traffic associations the matter was set for further argument.

The form approved is intended to show, among other details, the consignor and point of origin of the shipment and the consignee and place of destination, together with the route of the movement; and all seem to concede that this detail should appear upon the freight bill presented at destination to the consignee of a shipment that has not been reconsigned in transit. The point still in doubt is whether upon a reconsigned shipment the freight bill presented by the delivering carrier at the ultimate destination should disclose to the new consignee the name of the original consignor. This question was briefly discussed in the original report, *id.*, p. 498; but it was apparent upon the reargument that among the shippers and carriers there is still no agreement or uniformity of understanding as to their respective rights and duties in this particular.

Section 15 of the regulating statute declares it to be unlawful for a carrier to disclose to any person or corporation, "without the consent of such shipper or consignee"—

any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor. * * *

A movement of merchandise by rail ordinarily implies a business transaction between the consignor and the consignee with respect to which the privacy guaranteed by the act, in the provision just quoted, may be of no small importance. Intervening under a contract of carriage in the business affairs of others, the carrier is prohibited by the statute from making disclosures to anyone "other than the shipper or consignee" without first securing the "consent of such shipper or consignee." The commercial transaction between the consignor and the consignee is a matter in which the carrier ordinarily has no concern. In that trade relation with one another the consignor and the consignee have a right of privacy, and the obvious meaning and purpose of the provision in question is to restrain the carrier from violating this right by revealing information necessarily acquired by it in performing the transportation service. It is true, as pointed out in the original report, *id.*, p. 498, that the clause enumerates certain information, including the name of the consignee, that the carrier may not disclose and that no reference is made in it to the name of the consignor. It is contended therefore that the carrier is under no restraint with respect to the consignor and may freely disclose his name to anyone interested in having the information. We are not able, however, to accept that view of the provision in question as satisfying either its spirit or its purpose. On the contrary, we think it clear that the enumeration there of certain information must be interpreted merely as illustrative of what must not be disclosed by the carrier, and not as leaving the carrier free to reveal the name of the consignor to anyone and everyone seeking that information. The apparent purpose of the provision is to forbid the carrier from disclosing information that "may be used to the detriment or prejudice of such shipper or consignee." The carrier ought not on any ground to disclose the information it acquires by virtue of its agency for others in a service of carriage; and the purpose of the provision in question was to put it under an affirmative restraint against disclosure, apparently to the extent necessary to protect the interest of "such shipper or consignee." It would be altogether illogical and entirely inconsistent with reason, and with what must be considered to be the plain purpose of that provision, to require the carrier to withhold the name of the consignee and at the same time permit it without restraint to disclose to strangers the name of the consignor.

This brings us to a consideration of the special question raised upon the rehearing, namely, whether after reconsignment the freight bill should disclose to the new consignee the name of the original consignor. The consignee of a reconsigned shipment ordinarily is a stranger to the transaction between the original consignee and the

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original consignor. The reconsignment implies a commercial transaction between the original consignee and the ultimate consignee which has no relation whatever to the transaction between the original consignor and the original consignee. As to this second transaction we think the original consignee has a right of privacy which may not be lawfully violated by the carrier by revealing to the ultimate consignee the name of the original consignor without first securing the consent of the original consignee; and we hold that without such consent the freight bill issued upon a shipment that has been reconsigned in transit should not show the name of the original consignor.

Something has been said also as to the right of the carrier to show upon such a freight bill the original point of origin. Just how that can be avoided when the through charges are collected at the ultimate destination of the reconsigned shipment has not been made clear to us. There may be instances where the charges accruing up to the point of reconsignment on basis of the full local rate are paid by the original consignee. In such cases the ultimate consignee is concerned only with the rate from that point and there is no reason why the freight bill should disclose any information to him as to the origin or routing of the shipment, except from the reconsigning point to the ultimate destination. When, however, the ultimate consignee is called upon to pay the through charges from the original point of origin, or a portion of the through charges based upon the remainder of a joint through rate, he is entitled to know whether in making out the freight bill there has been a proper application of the published rates of the carriers, and of this the ultimate consignee can not be well advised unless the point from which the shipment first started, as well as the route of the movement, are shown upon the freight bill. We shall therefore limit ourselves to the finding that the freight bill upon a reconsigned shipment must not show the name of the original consignor, except with the consent of the original consignee, and must not show the point of origin or the routing except to the extent just explained.

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INVESTIGATION AND SUSPENSION DOCKET No. 655.
RATE INCREASES IN WESTERN CLASSIFICATION
TERRITORY—PART III.

Submitted January 1, 1916. Decided February 8, 1916.

1. Proposed increase from 30,000 pounds to 40,000 pounds in the minimum carload weight on grain products and from 40,000 pounds to 50,000 pounds in the minimum carload weights on wheat and rye found justified.
2. Following 1915 *Western Rate Advance Case*, 35 I. C. C., 497, 603-611, proposed increased rates on bituminous coal from Illinois mines and other points to points west of the Mississippi River found justified.
3. Cancellation of the present interstate commodity rate on gas coke in carloads from St. Charles, Mo., to St. Louis, Mo., found justified.
4. Proposed increased rates on broom corn from points in Kansas and Oklahoma to points in Colorado and New Mexico not justified.
5. Proposed increased rates on wheat and corn between Arkansas stations on the St. Louis & San Francisco Railroad and Memphis, Tenn., justified.

H. G. Herbel for Missouri Pacific Railway Company-Iron Mountain system.

Thomas Bond for St. Louis & San Francisco Railroad Company.

F. A. Leland for Southwestern lines.

William Gray for Chicago, Burlington & Quincy Railroad Company; Northern Pacific Railway Company; and Great Northern Railway Company.

T. R. Farrell for Wabash Railroad Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company; Missouri, Kansas & Texas Railway Company of Texas; and Wichita Falls & Northwestern Railway Company.

H. R. Small for Illinois Southern Railway Company.

F. M. Campbell for Litchfield & Madison Railway Company.

F. H. Behring for Southern Railway Company.

H. G. Krake for Commerce Club of St. Joseph and Commercial Club of Kansas City.

R. D. Rynder and *R. O'Hara* for Swift & Company

R. W. Ropiequet for Southern Coal, Coke & Mining Company; Illinois Fuel Company; and Vulcan Coal & Mining Company.

W. V. Stockton for Illinois Fuel Company.

F. B. DeCamp for Ayrshire Coal Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves proposed increased rates in western classification territory on live stock, grain, grain products, packing-house products, fertilizers, fresh meats, bituminous coal, gas coke, hay, and broom corn; an increased carload minimum on wheat, rye, and grain products; and the proposed cancellation of certain joint through rates applicable on packing-house products and fresh meats. Some of the tariffs involved were suspended until March 30, 1916; others until July 31, 1916. Other tariffs were transferred to this docket from Investigation and Suspension Docket No. 606, *The 1915 Western Rate Advance Case—Part II*. The suspension orders thus transferred expired December 29, 1915. Some of the tariffs proposing increased rates on live stock, packing-house products, fresh meats, hides, fertilizers, and broom corn, and on hay in excess of class C rates have been withdrawn because similar increases were disapproved in *The 1915 Western Rate Advance Case*, 35 I. C. C., 497. All but one of the tariffs proposing increased rates on grain have been withdrawn also, and an order will be entered discontinuing proceedings relative to all of the tariffs withdrawn. Respondents offer to postpone the effective date of the tariffs proposing the cancellation of through rates on packing-house products and fresh meats, moving to have them considered in *The Western Live Stock Case*, Docket No. 8436. But no justification of the cancellation is offered and the motion will be denied. The tariffs will be ordered canceled, but without prejudice to the consideration of the questions presented in Docket No. 8436, *supra*. Supplement No. 7 to Kansas City Southern Railway tariff I. C. C. 3204, cotton piece goods, page 3; supplement 22 to St. Louis & San Francisco Railroad tariff I. C. C. No. 6481, item No. 471; and supplement No. 3 to Wisconsin & Michigan Railway tariff I. C. C. B-629, item 73, propose reductions in rates. Our orders suspending the rates proposed have expired and as to them the proceeding will be discontinued.

MINIMUM WEIGHTS ON GRAIN PRODUCTS.

Respondents proposed to increase the carload minimum on grain products from 30,000 pounds to 40,000 pounds. The change was protested by the Southwestern Millers League. The protest was subsequently withdrawn without prejudice to protestant's right to present its objections in a formal complaint. Respondents' justification for the minimum proposed is identical with the justification offered in *The 1915 Western Rate Advance Case*, *supra*. The territories affected in the two proceedings are similar, and for the reasons

stated in *The 1915 Western Rate Advance Case, supra*, we find that respondents have justified the increase. Supplement No. 6 to Potteet's tariff I. C. C. No. 287, proposes in items Nos. 2054-A and 2058-A to increase the minimum carload weight on wheat and rye to 50,000 pounds. This minimum would conform to the minima that obtain generally for wheat and rye and has been justified.

BITUMINOUS COAL.

The increased rates proposed on bituminous coal affect the identical territory that was affected by similar increases found justified in *The 1915 Western Rate Advance Case, supra*, and the justification offered in that case is repeated here. Many of the increases were not protested. The Southern Coal, Coke & Mining Company and the Ayrshire Coal Company protested the increases proposed in certain tariffs of the Illinois Southern Railway and of the Southern Railway Company's St. Louis-Louisville divisions, and other coal dealers and shippers appeared at the hearing to join in the protests.

Illinois Southern Railway tariffs I. C. C. Nos. 640, 641, and 642 were suspended until December 29, 1915. Increased rates were proposed in them analogous to the rates from the same general territory and to the same points that were found justified in *The 1915 Western Rate Advance Case, supra*, and are justified by respondents in the same way. A witness for the Illinois Fuel Company argued that his company is located in the so-called inner group of southern Illinois coal mines and, being nearer to the points of destination involved, should be subjected to slighter increases than had been made from the outer group. The two groups are described in *The Illinois Coal Cases*, 32 I. C. C., 659, 663, 676, 682. The proposed increases now before us merely preserve the previous relationship between the rates from the two groups. We said in *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, 557, that—

Where the relation has not been changed and where the discrimination, if one previously existed, has not been intensified, that question does not properly arise upon the justification of the increase.

Southern Railway tariffs I. C. C. Nos. C-1665, C-1666, and C-1667 proposed increases from points on the Southern Railway which would harmonize with the rates heretofore found justified from points on the Illinois Central Railroad and the rates herein found justified from points on the Illinois Southern. The facts stated in connection with the rates proposed by the Illinois Southern apply equally to the rates proposed by the Southern.

Litchfield & Madison Railway tariffs I. C. C. Nos. 123, 124, and 125 proposed increased rates that would conform generally to the increased rates heretofore made by other carriers. The increases

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are not protested, and the order suspending the tariffs proposing them expired December 29, 1915.

We find that the increased and proposed increased rates on bituminous coal have been justified.

GAS COKE.

Item No. 11-B in supplement No. 8 to Missouri, Kansas & Texas tariff I. C. C. No. A-3854 canceled an interstate commodity rate on gas coke, from St. Charles, Mo., to St. Louis, Mo. The rate had ceased to be used and the cancellation was not protested. The order suspending the tariff expired December 29, 1915.

We find that this tariff item has been justified.

BROOM CORN.

Increased rates on broom corn from points in Kansas and Oklahoma to points in Colorado and New Mexico were proposed in supplement No. 12 to Missouri, Kansas & Texas tariff I. C. C. A-3870, items 30-B and 35-C. The statement is made that similar increased rates applied over one road but were under suspension over others. No testimony was offered explaining or attempting to justify the increased rates. We find that they have not been justified, and the schedules proposing them will be required to be canceled.

WHEAT AND CORN.

Supplement No. 35 to St. Louis & San Francisco Railroad tariff I. C. C. No. 6256, filed to take effect June 22, 1915, but suspended, proposed increased rates on wheat and corn between stations on the Memphis and St. Louis division of the St. Louis & San Francisco and Memphis, Tenn. An increase of 1 cent per 100 pounds, from 6 cents to 7 cents, is proposed on corn between Memphis and stations from 15 miles to 60 miles away and an increase of 2 cents, from 5 cents to 7 cents, between Memphis and stations less than 15 miles away. An increase of 1 cent, or from 6 cents to 7 cents, is proposed on wheat to and from stations 4 miles, 5 miles, and 11 miles away. None of these increases was protested either before or at the hearing.

Respondent shows that the reshipping rate applicable from St. Louis to Memphis combined with the present rates from Memphis makes combination rates lower than the present through rates from St. Louis to the same stations, and that both the Chicago, Rock Island & Pacific and the St. Louis, Iron Mountain & Southern railways maintain rates in the same territory for similar distances that are as high as the proposed rates involved, or higher.

We find that the rates proposed have been justified.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 683.
PASSENGER FARES FROM MILWAUKEE, WIS.

Submitted November 10, 1915. Decided February 8, 1916.

Proposed cancellation of joint passenger fares from Milwaukee, Wis., to Coopersville, Nunica, and Muskegon, Mich., on the line of the Grand Rapids, Grand Haven & Muskegon Railway, found not to have been justified. Schedules under suspension ordered canceled.

F. P. Walsh for Crosby Transportation Company.

Joseph Kirwin for protestant, Grand Rapids, Grand Haven & Muskegon Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

By schedules published to take effect July 16, 1915, the Crosby Transportation Company proposed to cancel joint passenger fares from Milwaukee, Wis., to Coopersville, Nunica, and Muskegon, Mich., on the line of the Grand Rapids, Grand Haven & Muskegon Railway Company. Upon protest by the last-named carrier the schedules were suspended until May 13, 1916.

Protestant operates an electric line of railroad from Muskegon to Grand Rapids, Mich. Grand Haven is the terminus of a branch line which connects with the main line at Grand Haven Junction. Coopersville and Nunica are located on protestant's main line between Grand Haven Junction and Grand Rapids and are also served by the Grand Trunk system. Grand Haven and Muskegon are on the eastern shore of Lake Michigan. The Crosby Transportation Company operates a line of boats between Milwaukee and Grand Haven and Muskegon.

We found in *Damon v. Crosby Transportation Co.*, 38 I. C. C., 448, decided March 24, 1915, that the refusal of the Crosby Transportation Company to participate in the sale of through tickets between Milwaukee and Grand Rapids in connection with the Grand Rapids, Grand Haven & Muskegon Railway while it authorized the sale of through tickets between Milwaukee and Grand Rapids in connection with the Detroit, Grand Haven & Milwaukee Railway, operated by the Grand Trunk system, unjustly discriminated against the Grand Rapids, Grand Haven & Muskegon. In complying with our order in that proceeding the Crosby Company estab-

lished joint passenger fares with the protestant carrier, not only between Milwaukee and Grand Rapids, but also between Milwaukee and Coopersville, Nunica, and Muskegon. The fares from Milwaukee to these points were published in the Crosby Transportation Company's tariff, concurred in by protestant, and the fares in the reverse direction were published in protestant's tariff, concurred in by the Crosby Company. Before proposing the cancellations here involved the latter company withdrew its concurrence relative to the joint fares maintained from the three points involved to Milwaukee.

The Crosby Company represents that the travel under the fares in question is chiefly from Milwaukee to Grand Rapids and Muskegon and that there is comparatively little business to Coopersville and Nunica. But these points are accorded joint fares in connection with the Grand Trunk system and the record discloses no substantial reason why protestant should be treated differently from the Grand Trunk. The testimony on behalf of the Crosby Company relates principally to the situation at Muskegon. Muskegon is said to be practically local to its line, and to be afforded reasonably adequate facilities for travel to and from Milwaukee, either by the Crosby Company alone or in connection with the Goodrich Transit Company. The Crosby Transportation Company's boats leave Milwaukee at 9 p. m., arriving at Grand Haven about 4.30 a. m. the following day. After lying over at Grand Haven for about six and one-half hours, the boats proceed to Muskegon. The delay at Grand Haven on the return trip amounts to about three hours. The Goodrich Transit Company operates a boat line between Grand Haven and Muskegon, and accepts tickets issued by the Crosby Company for transportation between those points. Travelers via the two boat lines are not delayed at Grand Haven on the way to Muskegon and are delayed only about one and one-half hours on the return trip. Daily service is afforded during the period of open navigation. During the winter months, however, the port at Muskegon is closed, and the boats described do no passenger business between Grand Haven and Muskegon. During those portions of the year that immediately precede and follow the closing of the port, only a triweekly service is maintained by the Goodrich line. Protestant furnishes an hourly service between Muskegon and Grand Haven between 6.30 a. m. and 6.30 p. m., with a minimum during the summer of 18 cars per day. At least two hours are required in making the trip between Grand Haven and Muskegon by boat, and about one hour by protestant's line.

It is not at all clear that Muskegon may properly be regarded as local to the Crosby Transportation Company with respect to this passenger business. The boat-line fare from Milwaukee to Muskegon

is \$2.25, while the fare sought to be canceled is \$2.70. The \$2.70 fare was established voluntarily, presumably in response to public demand, and although it has been but little advertised, and is in excess of the fare via the boat lines, many travelers have paid it. But even if the boat-line routes are assumed to afford reasonably adequate service, we may still require the maintenance of the joint fares in controversy. *Flour City S. S. Co. v. L. V. R. R. Co.*, 24 I. C. C., 179; *Decatur Navigation Co. v. L. & N. R. R. Co.*, 31 I. C. C., 281.

The real reason for the cancellation involved is a dispute relative to divisions. As stated in the report in the *Damon case*, *supra*, the docks used by the Crosby Transportation Company at Milwaukee are owned by the Chicago, Milwaukee & St. Paul Railway Company, but are leased by the Grand Trunk. The dock at Grand Haven is owned by the Grand Trunk. After the joint fares were established, the Grand Trunk required the Crosby Transportation Company to pay a charge of 60 cents for each one-way ticket sold at the fares involved, as compensation for the use of the docks and for certain accounting done by the Grand Trunk in connection with their use. The boat line endeavored to pass the charge along to protestant, but protestant refused to shrink its divisions to that extent. Disagreements among carriers relative to divisions of joint rates are insufficient to justify the cancellation of such rates. Furthermore, a similar dock charge has been made by the Grand Trunk for a number of years for passengers traveling between Milwaukee and Grand Rapids, under joint fares between the boat line and the Grand Trunk, which was not challenged in the *Damon Case*, *supra*. The Crosby Transportation Company also participates in joint passenger fares with various rail carriers, and while it does not appear that the Grand Trunk exacts a dock charge in connection with each of these fares, or what the amount of such charge is, if any is exacted, it does appear that in no instance has any connection of the Crosby Transportation Company been called upon to pay this dock charge or any portion of it.

We find that the proposed cancellation of the joint fares in question has not been justified, and the schedules under suspension will be ordered canceled.

38 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 698.
MINIMUM WEIGHT ON POTATOES.

Submitted December 18, 1915. Decided February 8, 1916.

Proposed increase from 24,000 pounds to 30,000 pounds in the minimum weight from East St. Louis, Ill., to points north of the Ohio River and east of the Illinois-Indiana state line, on potatoes originating in Louisiana and Texas, not justified, the commodity not safely loading in excess of 24,000 pounds per standard car. Schedules under suspension ordered canceled.

James Griffiths for Texas, Louisiana, Arkansas, and Oklahoma lines.

Edward Barton and Kramer, Kramer & Campbell for Baltimore & Ohio Railroad Company; Baltimore & Ohio Southwestern Railroad Company; and Cincinnati, Hamilton & Dayton Railway Company.

J. E. Robinson for Albert Miller & Company.

J. Keavy for Indianapolis Chamber of Commerce.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The schedules under suspension proposed to increase the minimum weight applicable from East St. Louis, Ill., to points north of the Ohio River and east of the Illinois-Indiana state line, on potatoes originating in Louisiana and Texas, from 24,000 pounds to 30,000 pounds. Certain of the schedules were filed to take effect September 21, 1915; others, August 21, 1915. They were protested by the Indianapolis Chamber of Commerce and by Albert Miller & Company, potato dealers at Chicago, Ill., engaged extensively in shipping potatoes from Texas to Chicago and eastern points, and were suspended until June 19, 1916. Respondents operating in the territory involved east of St. Louis will be referred to as the eastern lines; respondents southwest of St. Louis, as the initial lines. Only three eastern lines entered appearances at the hearing.

The identical issue presented was considered in *Rates on Potatoes and Other Articles*, 23 I. C. C., 69, decided March 21, 1912. We found in that case that the increased minimum proposed was unreasonable, and that a reasonable minimum from St. Louis to the territory of destination should not exceed 24,000 pounds. The respondents therein accordingly were required to withdraw the tariff there under suspension, and the minimum on potatoes, applicable to

the whole movement from the southwest to the eastern territory involved, has since been 24,000 pounds. Protestants state that potatoes from the producing points in question can not be loaded in excess of the present minimum without damage to the commodity. Our conclusions in *Rates on Potatoes and Other Articles, supra*, were based in part upon the initial lines' admissions that the physical characteristics of the Louisiana and Texas potato prevented heavier safe loading than 24,000 pounds per standard car. These admissions are repeated by the same carriers in the instant proceeding. The eastern lines admit that conditions are no different to-day than when *Rates on Potatoes and Other Articles, supra*, was pending, and offer no convincing testimony to justify the proposed increased minimum.

The tariff publishing the rates applicable to the traffic names the rates to East St. Louis, together with the arbitraries from East St. Louis, and states that the through rates are made by the addition of the arbitraries named to the rates to East St. Louis. Potatoes are rated fifth class in the official classification, and the arbitraries named are the same as the fifth-class rates. But the minimum on potatoes, in carloads, under the official classification is 30,000 pounds. The eastern lines state that they have no objection to the 24,000-pound minimum, provided the arbitrary from East St. Louis is increased from the fifth-class to the fourth-class basis; thereby admitting that the object of the schedules under suspension is to secure greater revenue for the eastern lines on this traffic when loaded lighter than 30,000 pounds to the car. No increase in the rates themselves is proposed in the suspended schedules, and we are here concerned only with the proposed change in the minimum. If a minimum on this traffic in excess of 24,000 pounds may not properly be maintained, the schedules under suspension must be canceled.

We find upon the facts of record that respondents have not justified the proposed increase in minimum weights and that a minimum on the traffic in question in excess of 24,000 pounds would be unreasonable. An order will be entered directing the cancellation of the schedules under suspension.

38 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 700.
MATCHES FROM DULUTH.

Submitted November 13, 1915. Decided February 8, 1916.

Schedules providing for the cancellation of commodity rates on matches in carloads from Duluth, Minn., to various points in Arkansas found not justified and required to be canceled.

G. R. Hall for protestants.

No appearance for respondents.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By an item contained in tariffs filed to take effect August 30, 1915, respondents proposed to cancel specific joint commodity rates on matches in carloads ranging from 59 cents per 100 pounds to 81 cents, from Duluth, Minn., to Little Rock, Hot Springs, Fort Smith, and 18 other points in Arkansas, thereby rendering applicable rates from 1.5 cents per 100 pounds to 8.5 cents higher. Upon protest by the Commercial Club of Duluth and the Union Match Company of West Duluth, Minn., the tariffs were suspended until December 28, 1915, and later until June 28, 1916.

Prior to December 29, 1912, the rates on matches in carloads from Duluth to Arkansas were the aggregates of the rates to and from Hannibal, Mo., which point takes St. Louis rates to the destinations involved. Specific joint rates applied from Oshkosh, Wis., to 32 points in Arkansas, including the points above named, which were lower than the combination rates from and to the same points based on Hannibal and which, like the rates from Chicago, Ill., were made on the basis of a 10-cent arbitrary over the St. Louis rate. These Oshkosh rates were established July 7, 1910. They also applied to other points in Arkansas taking the same rates as the points specifically named, and served as a basis for rates to those points in Arkansas that took certain arbitraries over the rates to the Arkansas points specifically named. Specific commodity rates on a higher basis applied from Oshkosh prior to July 7, 1910. On December 29, 1912, the number of destination points in Arkansas to which specific commodity rates were named on the Chicago basis from Oshkosh was reduced to 11 points the rates to which were not to be used as a basis for making rates to other points in Arkansas. There had been negotiations between the carriers serving Duluth

and the match manufacturers of Duluth, and on the same date similar joint rates were made applicable from Duluth to the same 11 Arkansas points to which the rates from Oshkosh were made applicable. On October 7, 1913, joint rates constructed on the same basis were established to 10 additional points in Arkansas. The cancellation proposed would leave in effect joint rates from Duluth made on the basis of an arbitrary of 17.5 cents over Hannibal, equal to the local rate from Duluth to Hannibal, which would mean an increase of 7.5 cents per 100 pounds to most of the destinations involved.

Respondents were not represented at the hearing and no statement has been received from them. Protestants adduced considerable testimony to prove that the rates sought to be canceled are reasonable and properly adjusted relatively to the rates from competitive points. On behalf of protestant Union Match Company it was testified that the proposed increased rates would practically exclude it from participation in business to Arkansas.

We find that respondents have not justified the proposed increased rates involved, and the schedules under suspension will be ordered canceled.

38 I. C. C.

No. 6490.
ANSON, GILKEY & HURD COMPANY ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 10, 1915. Decided February 18, 1916.

Defendants directed to put into effect tariffs which will remove the unjust discrimination found to exist at Chicago.

J. S. Burchmore for complainants.

J. N. Teal for West Coast Lumber Manufacturers' Association, intervenor.

M. F. Gallagher for Weed Lumber Company, Hammond Lumber Company, and California Sugar & White Pine Company, interveners.

Charles Donnelly for Northern Pacific Railway Company and Great Northern Railway Company.

H. A. Scandrett for Union Pacific Railroad Company.

F. H. Wood for Southern Pacific Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

In the original proceeding herein, reported at 33 I. C. C., 382, complainants assailed the rates on sash and doors from their manufacturing plants in Wisconsin, Iowa, and Illinois to points in central freight association and trunk line territories as unreasonable and unjustly discriminatory when compared with the rates on sash and doors from points on the Pacific coast to the same destinations. They also assailed as unreasonable rates on lumber in carloads from California, Oregon, and Washington to the points where their plants are located. The Commission found: (1) That the rates attacked had not been shown to be inherently unreasonable; (2) that unjust discrimination had been proved with respect to the classification of lumber and lumber products, especially sash and doors, in the various competing territories involved.

No order was entered, but the report stated that defendants should, within 90 days from the date of the service thereof, put into effect tariffs which would remove the unjust discrimination. On June 2, 1915, this time was extended until August 1, 1915. The carriers defendant having failed within the time specified to comply with

the report, on July 31, 1915, the Commission issued an order requiring defendants on or before October 1, 1915, to cease and desist from the unjust discrimination found to exist in its report and to establish new rates which would be free from unjust discrimination. This order was subsequently modified so as to become effective November 15, 1915. On October 18, 1915, complainants filed a motion for the entry of a supplemental order, alleging that defendants had failed to comply with the requirements of the order referred to above in that no rate adjustments on sash and doors had been filed either from complainants' plants or from Pacific coast points to Chicago and to points in central freight association territory. The present report relates to this motion.

Much of the discussion in the briefs filed by complainants and interveners relative to this motion has to do with the questions whether or not sash, doors, and blinds should take a differential above the rates on lumber, and, if so, whether such differential should be established on a percentage basis of the lumber rates or by adoption of a flat differential irrespective of distance or the amount of the basal rates. These are questions squarely in issue in the Commission's Docket No. 8131, In the Matter of Rates on and Classification of Lumber and Lumber Products, and can be decided satisfactorily only after the completion of that general investigation, which, it is to be noted, was instituted by the Commission after the issuance of the original report herein, *supra*.

Apparently the only action taken by defendants in response to the Commission's order in this case was the cancellation of all joint through rates on sash and doors from the Pacific coast to points in eastern trunk line territory, so that the rates now applicable on traffic from such points are made by combination on Mississippi River crossings or Chicago. These combination rates on sash and doors are higher than the through rates on lumber and result, speaking generally, in a removal of the discrimination found in so far as eastern trunk line territory is concerned. The contention of interveners located on the Pacific coast that this action of defendants has resulted in rates on sash and doors from their plants to eastern trunk line territory that are unreasonable is not an issue that can properly be decided in this proceeding.

The record discloses that the rates on sash and doors from points in California, Oregon, and Washington to points in central freight association territory generally are made by combination on Chicago or Mississippi River crossings, and embody differentials above the rates on lumber. While these differentials vary in amount they are substantial. It would appear, therefore, that the propriety of this

38 I. C. C.

adjustment may properly await the determination of the issues in the general investigation mentioned above.

From the north coast and California, and from Clinton, Iowa, to Chicago, sash and doors take the same rates as lumber; from Oshkosh, Wis., to Chicago the rate on sash and doors is on a higher basis than the rate on lumber. This lack of uniformity in the treatment of sash and doors from the producing points involved to Chicago was found in the original report, *supra*, to result in unjust discrimination. The carriers defendant will be given 60 days from the date of the service hereof in which to put into effect tariffs which will remove this unjust discrimination. Such tariffs will not be regarded as effecting a permanent readjustment at Chicago but as temporary in character, pending a report in Docket No. 8131.

38 I. C. C.

No. 6916.
NATIONAL ROLLING MILL COMPANY
v.
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

FOURTH SECTION APPLICATION No. 2045.

Submitted January 3, 1915. Decided February 8, 1916.

1. Rate of 22 cents per 100 pounds on bar iron in carloads from Vincennes, Ind., to Hopkinsville, Ky., not found to have been unreasonable. Complaint dismissed.
2. Authority granted to applicant Illinois Central Railroad Company to charge a lower rate for the transportation of bar iron from Evansville, Ind., when from beyond, to Nashville, Tenn., than the rates concurrently in effect on like traffic to Hopkinsville and other intermediate points. Maximum rates to apply at intermediate points prescribed for the future.

C. B. Kessinger for complainant.

E. L. Cory for Chicago & Eastern Illinois Railroad Company.

F. W. Gwathmey for Illinois Central Railroad Company.

N. W. Proctor for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of iron and steel at Vincennes, Ind. By complaint, filed May 18, 1914, it alleges that the rate of 22 cents per 100 pounds charged by defendants for the transportation of bar iron in carloads from Vincennes to Hopkinsville, Ky., is unreasonable and in violation of section 4 of the act to the extent that it exceeds a rate of 17 cents contemporaneously in effect to Nashville, Tenn., to which Hopkinsville is intermediate. Reparation is asked. The claim was presented to the Commission informally May 31, 1913.

Complainant shipped 22 carloads of bar iron from Vincennes to Hopkinsville during the period from November 4, 1911, to January 20, 1914. No joint through rate was applicable, and charges were collected at a combination rate of 22 cents per 100 pounds composed of a commodity rate of 5 cents from Vincennes to Evansville over the Chicago & Eastern Illinois Railroad and a commodity rate of 17

cents from Evansville to Hopkinsville over the Illinois Central Railroad. The rate to Evansville has since been increased 5 per cent to 5.3 cents. The 17-cent rate from Evansville to Hopkinsville also applies over the line of defendant Louisville & Nashville Railroad, but none of the shipments here involved were moved by that carrier. The testimony is confined to the reasonableness of the component applied south of the Ohio River.

Hopkinsville is 84 miles from Evansville over the Louisville & Nashville and 130 miles over the Illinois Central. Nashville is 157 miles from Evansville over the Louisville & Nashville and 215 miles over the Illinois Central and Tennessee Central railroads. The rate from Evansville to Nashville is 12 cents. The Illinois Central-Tennessee Central route from Evansville to Nashville is 37 per cent longer than the Louisville & Nashville route. Hopkinsville is intermediate to Nashville over both routes.

Complainant contends that the departure described from the long-and-short-haul rule of the fourth section involves an unreasonable rate to Hopkinsville in comparison with the rates on like traffic from St. Louis, Mo., Louisville, Ky., and Knoxville, Tenn., to Hopkinsville. The distances and rates from these points to Hopkinsville are as follows:

To Hopkinsville from—	Miles.	Rate.
		Cents.
Knoxville, Tenn.....	301	18
Louisville, Ky.....	175	18
St. Louis, Mo.....	247	22
Chicago, Ill.....	371	27

Defendants seek to justify the 17-cent component from Evansville to Hopkinsville as follows:

Nashville is on the Cumberland River and competition on the river affects the rates to Nashville. Certain boat lines are offering to transport bar iron from Evansville to Nashville at a rate of 4 cents less than the rail rates. The standard mileage scale of rates on the Louisville & Nashville Railroad if applied from Evansville to Nashville would make the rate on bar iron 28 cents. Water competition also has affected the rates on this traffic to Clarksville, Tenn., a point on the Cumberland River, 29 miles southeast of Hopkinsville by way of the Tennessee Central. Prior to the establishment of the present rate from Evansville to Hopkinsville the river rates from Evansville to Clarksville plus the local rate of the carriers from Clarksville to Hopkinsville aggregated less than the then established rail rate of 26 cents. The 17-cent rate from Evansville to Hopkinsville, which is 9 cents less than the combination of the rail rates on Clarksville and 6 cents less than the rates from Evansville to certain

intermediate points between Clarksville and Hopkinsville, was established by the Illinois Central in 1901. That carrier does not reach Clarksville over its own rails; its line terminates at Hopkinsville. The establishment of the rate on that basis was said to have been prompted by the desire of the Illinois Central to increase its traffic to Hopkinsville and followed complaints from the Hopkinsville jobbers that their competitors in Clarksville were able under the existing rate adjustment to extend their operations into territory contiguous to Hopkinsville to the detriment of the latter point. This rate was met by the Louisville & Nashville and, as the record shows, compares favorably with the rates on bar iron from other points in the same general territory for equal distances.

That portion of Fourth Section Application No. 2045 filed on behalf of the Illinois Central Railroad Company and its connections which asks authority to continue rates on bar iron in carloads from Evansville, Ind., when from beyond, to Nashville which are lower than the rates contemporaneously applicable on like traffic to Hopkinsville and other intermediate points was heard with the complaint. The following table shows the rates per 100 pounds to representative intermediate points between Evansville and Nashville on the route of the Illinois Central and the Tennessee Central railroads:

From Evansville to—	Distance.	Rate.	From Evansville to —	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
Corydon, Ky.....	21	12	Tulane.....	184	28
Waverly.....	28	13	Edgote.....	147	18
De Koven.....	48	15	Clarksville, Tenn.....	159	12
Sullivan.....	58	16	Summit.....	161	18
Blackford.....	62	17	Spaulding.....	166	21
Marion.....	74	19	Peddingville.....	176	24
Fredonia.....	88	21	Pegramville.....	190	26
Princeton.....	99	24	Scottsboro.....	196	21
Cerulean.....	114	24	Woodard.....	208	18
Hopkinsville.....	130	17	Nashville.....	215	12

The rates from Evansville to Cerulean and intermediate stations are specific commodity rates based on distance. The rate to Hopkinsville is maintained primarily to meet the lower rate of the short route of the Louisville & Nashville Railroad. The rates from Evansville to stations between Hopkinsville and Clarksville are made either by combination on Hopkinsville or on Clarksville. The rates from Evansville to stations between Clarksville and Nashville are made either by combinations on Clarksville or Nashville.

We find that the combination rate assailed is not shown to be unreasonable, and that defendant and applicant, Illinois Central Railroad Company, has justified the application of a rate on bar iron in carloads from Evansville when from beyond to Nashville which is lower than the rates contemporaneously applicable on like traffic to intermediate points south of De Koven, Ky., provided that the rates

to points south of De Koven to and including Hopkinsville shall not exceed 17 cents per 100 pounds, and to points south of Hopkinsville 20 cents per 100 pounds, and provided further that the rates to the intermediate points shall not exceed either the lowest combination or the present rates. We make no finding with respect to the application of a rate by the Louisville & Nashville Railroad from Evansville to Nashville lower than the rate contemporaneously maintained to intermediate points other than Hopkinsville, as that defendant's application for authority to continue this adjustment was not heard with the complaint.

Appropriate orders will be entered.

38 I. C. C.

No. 7194.
LIPPARD-STEWART MOTOR CAR COMPANY ET AL.
v.
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted July 23, 1915. Decided February 8, 1916.

Carrier furnished two shorter cars in lieu of 50-foot car ordered, for the transportation of three motor delivery vehicles; *Held*, That the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued if a car of the dimension ordered had been furnished. Case held open for further proof as to reparation.

August Becker and *J. R. Ulsh* for complainants.

J. M. Sternhagen for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Lippard-Stewart Motor Car Company and Michigan Motors Company, corporations. When the shipment involved was made the Lippard-Stewart Company was engaged in the manufacture of motor delivery cars with a place of business at Buffalo, N. Y. The Michigan Motors Company was engaged in the sale of motor vehicles with a place of business at Portland, Oreg. The complaint, filed August 21, 1914, alleges that the charges collected by defendants for the transportation of three motor delivery cars from Black Rock, Buffalo, N. Y., to Portland were unreasonable and unjustly discriminatory. Reparation is asked on behalf of the Michigan Motors Company in the sum of \$250. The shipment was delivered within two years prior to the filing of the complaint.

Agent Countiss's tariff I. C. C. No. 942, governed by the western classification, named a carload commodity rate of \$3 per 100 pounds on automobiles, passenger and freight, from Black Rock to Portland, and a less-than-carload rate of \$7. A minimum carload weight of 11,200 pounds was provided for cars over 39 feet 6 inches long, including cars 42 feet long, with a minimum of 12,000 pounds for cars over 42 feet long, including cars 50 feet long. The automobiles had been sold by the Lippard-Stewart Motor Car Company to the Michigan Motors Company and were delivered to the Michigan Central Railroad July 30, 1912, after a 50-foot car had been ordered. No particular type of car was specified, but the request for a 50-foot car was understood by the initial carrier to call for a car suitable for load-

ing this traffic. The initial carrier was unable to furnish the equipment called for and the shipment was loaded into two smaller cars and moved out under one bill of lading on or about August 7, 1912. Two motor cars aggregating 11,620 pounds were loaded into one car and one motor car weighing 8,740 pounds into the other car. The carload rate of \$3, minimum 11,200 pounds, was charged on the first car; the less-than-carload rate of \$7 on the other. Charges were collected from the Michigan Motors Company on the two cars in the sum of \$348.60 on the first car and \$261.80 on the second, based on the actual weight of each load. Complainants question the correctness of the weights stated, but their contentions are not supported by the record. The charges described were paid on an aggregate weight of 15,360 pounds, apparently without any question about the weight.

Rule 6-B of current western classification I. C. C. No. 11 provides in part as follows:

SECTION 4. When a shipper orders a car over 36 feet 6 inches in length for articles "subject to rule 6-B," and car of the length ordered can not be furnished within six days after receipt of order * * *, carrier will, after expiration of such period, furnish a longer car or two shorter cars under the following conditions:

2. If the carrier is unable, within six days after receipt of order * * *, to furnish car of the length ordered or a longer car than ordered, and furnishes two shorter cars in place of the car ordered, one of the cars (the longer car of the two, if of different lengths) shall be charged the minimum weight fixed for such car (actual or estimated weight, if greater), and the remainder of the shipment loaded in or on the other car shall be charged at actual or estimated weight and carload rate, but in no case shall the total weight charged for the two cars be less than the minimum weight fixed for the car ordered.

Western classification I. C. C. No. 8, in effect when the shipment moved, contained no such rule authorizing the protection of the carload rate. If the shipment had been forwarded in a 50-foot car, or if the present rule of the classification had been in effect, the charges would have amounted to only \$460.80.

We have held in numerous cases that a carrier may not impose additional transportation charges on a shipper who orders a car of a capacity, length, or dimension specified in the carrier's tariff simply because the carrier is not provided with cars of the dimensions ordered. Defendants do not question this principle as applied to ordinary equipment, but insist that it has never been applied where the shipper orders a car of some "special type."

The testimony is conflicting as to the types of car required for complainants' shipments. Defendants state that such shipments can not be loaded into every 50-foot car or into an ordinary furniture car. But they could have been loaded into an automobile car with end doors

or staggered side doors or into a furniture car with large doors. The consignor of the shipment in issue has made numerous shipments of motor delivery vehicles of the size and character of that involved in 50-foot cars, three vehicles to a car.

In *Minneapolis Threshing Machine Co. v. C., M. & St. P. Ry. Co.*, 21 I. C. C., 181, we had under consideration the propriety of a so-called "two for one rule," which was not made applicable to flat cars. One of the carriers in that proceeding owned only 10 flat cars 50 feet long out of about 100,000 cars that constituted its equipment. We found that its exclusion of flat cars from its rule was unreasonable.

We find that the charges involved were unreasonable to the extent that they exceeded \$460.80. The record fails to show that the charges found unreasonable were ultimately borne by the Michigan Motors Company. Under these circumstances no reparation can be awarded at this time. The case will be held open in order that complainant may have an opportunity to establish its right to reparation. The changes effected in defendants' rules, since the shipment involved moved, render an order for the future unnecessary.

88 I. C. C.

No. 7753.

S. T. FISH & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted July 17, 1915. Decided January 24, 1916.

Charges collected for the transportation of cantaloupes in carloads from Swink, Colo., to Chicago, Ill., based on estimated weights, not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

J. E. Robinson for complainant.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is S. T. Fish, engaged in the wholesale produce business at Chicago, Ill., under the trade name of S. T. Fish & Company. By complaint, filed February 15, 1915, he alleges that the charges collected by defendants for the transportation of 14 carloads of cantaloupes, in crates, from Swink, Colo., to Chicago, in August and September, 1913, based on estimated weights, were unreasonable and unjustly discriminatory. Reparation is asked.

The shipments moved: Atchison, Topeka & Santa Fe Railway from Swink to Chicago or Atchison, Topeka & Santa Fe to Kansas City, Mo.; Chicago, Rock Island & Pacific Railway beyond. Defendants' tariffs governing the movements from Swink to Chicago specified estimated weights for crates of given dimensions ranging from the size known as the jumbo crate, 81 pounds, to the size known as the flat crate, 23.5 pounds. Other tariffs of defendants contemporaneously in effect and applicable to the traffic from Swink to the Atlantic seaboard and interior points, including Pittsburgh, Pa., and Cleveland, Ohio, but not including Chicago, specified estimated weights for sizes ranging from the jumbo crate, 75 pounds, to the flat one-third crate, 25 pounds. A joint rate was applicable at which charges were collected on the basis of the estimated weights provided for traffic to Chicago.

Complainant contends that the charges collected on the basis of the estimated weights applicable to shipments to Chicago were unreasonable and that the maintenance of the lower estimated weights

on similar traffic to other points resulted in unjust discrimination. No question is raised as to the reasonableness of the rate charged. Defendants contend that trade requirements, variations in the sizes of cantaloupes, and in the shape of crates and the weight of crate material, necessitate revisions from time to time in the estimated weights provided. Two of their tariffs, filed to take effect in August, 1913, prescribed uniform estimated weights for all eastbound traffic from Swink. The tariff naming proposed estimated weights on traffic destined to Pittsburgh and Cleveland was suspended in Investigation and Suspension Docket No. 297, and was subsequently withdrawn by defendants. The tariff naming the weights on traffic destined to Chicago was not suspended, with the result that the estimated weights and crate dimensions provided for Chicago traffic were different from the estimated weights and crate dimensions applicable to traffic destined to Pittsburgh, Cleveland, and the other eastern points. Effective June 1, 1914, defendants revised their tariffs governing this traffic, and since that date uniform estimated weights have been applied to all shipments of cantaloupes in crates from Swink.

Complainant made no attempt to show the actual weight of the shipments involved, and the only evidence that it did offer was vague and indefinite and altogether insufficient to prove that the estimated weights applied were unreasonable. No movement of cantaloupes from Swink to points east of Chicago is shown nor does the nature and extent of complainant's alleged competition with dealers located at such points appear.

We find that the estimated weights upon the basis of which defendants collected the charges involved are not shown to have been unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

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No. 7843.

HERMAN H. HETTLER LUMBER COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted July 20, 1915. Decided February 8, 1916.

Charges collected for the transportation of a carload of lumber from Meehan Junction, Miss., to Chicago, Ill., not shown to have been unreasonable. Complaint dismissed.

Frank Schafer, jr., for complainant.

R. Walton Moore for Alabama & Vicksburg Railway Company; Alabama Great Southern Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of lumber and forest products at Chicago, Ill. By complaint, filed March 22, 1915, it alleges that the rate of 30 cents per 100 pounds charged by defendants for the transportation of a carload of yellow-pine lumber September 1, 1914, from Meehan Junction, Miss., to Chicago, was unreasonable and unjustly discriminatory. Reparation is asked.

The shipment weighed 42,800 pounds and moved in accordance with the consignor's instructions: Alabama & Vicksburg Railway to Meridian, Miss.; Alabama Great Southern Railroad to Chattanooga, Tenn.; Cincinnati, New Orleans & Texas Pacific Railway to Danville, Ky.; Southern Railway to Louisville, Ky.; Pittsburgh, Cincinnati, Chicago & St. Louis Railway to destination. No joint through rate was applicable, and charges were collected in the sum of \$128.40 at a combination rate of 30 cents per 100 pounds, composed of a rate of 19 cents to Louisville and a rate of 11 cents beyond. Complainant maintains that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 24 cents per 100 pounds contemporaneously applicable on like traffic from Meehan Junction, through Cairo, Ill., East St. Louis, Ill., or St. Louis, Mo., over various routes to Chicago, and also from Meehan Junction, in connection with the Chicago, Indianapolis & Louisville Railway from Louisville to Chicago.

The availability of other routes at a lower rate than the rate charged over the route selected by the consignor is not enough to prove that complainant paid an unreasonable or discriminatory rate. And as no other evidence was adduced against the rate paid, the complaint must be dismissed.

No. 7405.

D. B. ZIMMERMAN

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted July 12, 1915. Decided February 8, 1916.

Charges for the transportation of six carloads of cattle from North Fort Worth, Tex., to Big Horn Wye (Hardin), Mont., branded at Clearmont, Wyo., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

H. J. Campbell for complainant.

F. K. Crosby for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

C. E. Spens for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the purchase and sale of cattle at Chicago, Ill. By complaint filed October 22, 1914, as amended November 13, 1914, he alleges that the charges collected by defendants for the transportation of six carloads of cattle in July, 1913, from North Fort Worth, Tex., to Big Horn Wye (Hardin), Mont., branded at Clearmont, Wyo., were unreasonable and unjustly discriminatory. Reparation is asked.

The shipments were forwarded July 1, 1913, consigned to complainant at Clearmont, a local station on the Chicago, Burlington & Quincy Railroad. They arrived there July 7, 1913. The cattle were unloaded, branded, and on July 9 were reshipped by complainant under a new contract to Big Horn Wye. Charges were collected on the basis of the legal rates of \$107 per car from North Fort Worth to Clearmont and \$36 per car from Clearmont to Big Horn Wye.

Defendants contemporaneously published a joint rate of \$117 per car from North Fort Worth, for cattle originating beyond, to Big Horn Wye. Effective July 27, 1913, subsequent to the movement of the shipments described, branding in transit at Clearmont was authorized under this rate. Complainant contends that the charges assessed were unreasonable to the extent that they exceeded charges that would have accrued at the joint rate of \$117 per car.

The publication of transit service at Clearmont after complainant's shipments moved does not prove that the absence of such service before was unreasonable. There is also no evidence that the rates applied were unreasonable. Defendants' witness admitted that he considered the charges excessive in view of the service performed, but this admission can not be considered controlling.

Upon all of the facts of record we find that the charges collected were lawfully applicable and that they are not shown to have been unreasonable or unjustly discriminatory. An order dismissing the complaint will be entered.

DANIELS, *Commissioner*, dissents.

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INVESTIGATION AND SUSPENSION DOCKET NO. 644.¹
OFFICIAL CLASSIFICATION RATES ON PAPER.

Submitted January 14, 1916. Decided February 15, 1916.

1. Proposed increased rates on printing paper, wrapping paper, blotting paper, cardboard, tag board, paper bags, and blank register paper in official classification territory, equivalent to the sixth-class rates, found to be reasonable, but certain proposed departures from the sixth-class basis disapproved.
2. Proposed increase from 18.9 cents to 21 cents per 100 pounds in the blanket rate on news print paper from New England and northern New York to points in central freight association territory not justified, but rate of 20 cents per 100 pounds found to be reasonable. Proposed increased rates on the same commodity from Alexandria, Ind., and Cheboygan, Mich., to eastern points, found not to have been justified.
3. Proposed increased rates on strawboard, paper boards, and building and roofing paper found not to have been justified.
4. Proposed increased rates on blank wall paper not found to be reasonable, but respondents permitted to increase the rates on that commodity to the same basis as that approved herein on news print paper.
5. Complaint alleging that rates on paper from mills in Wisconsin to points in central freight association territory and other points are unreasonable and unjustly discriminatory, dismissed.
6. Rates on paper from New England not shown to be unreasonable. Cause of complaint as to the discriminatory character of the rates and descriptions published by the New England lines apparently removed by suspended tariffs. Reparation denied, and complaint dismissed.

W. A. Parker, W. A. Cole, E. S. Ballard, H. J. Hart, S. S. Perry, F. L. Ballard, Parker McColestér, D. G. Gray, W. J. Kelly, C. H. Blatchford, C. L. Andrus, Paul Wadsworth, and M. R. Waite for respondents.

R. D. Jenks for West Virginia Pulp & Paper Company and other protestants.

Charles Conradis and *A. B. Hayes* for manufacturers of building and roofing paper, protestants.

F. M. Ives and *C. H. Tiffany* for New England Paper and Pulp Traffic Association, protestant.

Cassoday, Butler, Lamb & Foster; C. R. Hillyer; Frank A. Larisch; and *Herman Mueller* for Michigan Paper Mills Traffic Association, protestant.

The proceeding also embraces complaints in—Docket No. 6785, *New England Paper & Pulp Traffic Association v. Boston & Maine Railroad et al.*, and Docket No. 7497, *Pulp & Paper Manufacturers Traffic Association v. Akron, Canton & Youngstown Railway Company et al.*

F. J. Streyckmans for manufacturers of paper in Wisconsin and other protestants.

B. L. Peck for Great Northern Paper Company, protestant.

G. B. Plante, C. E. Mahony, and J. A. Henderson for American Newspaper Publishers' Association, protestant.

D. D. Devine for Continental Paper Bag Company and Falls Manufacturing Company, protestants.

B. G. Dahlberg for Minnesota & Ontario Power Company and other protestants.

Pierson & Shertz for Frank P. Miller Paper Company, protestant.

D. C. Lorentz for International Paper Company, protestant.

John S. Parker for New York and Pennsylvania Company, protestant.

H. F. Iverson for Perkins-Goodwin Company and Tidewater Paper Mills, protestants.

S. R. Hart for American Writing Paper Company, protestant.

F. C. Kemp and W. E. Galey for Chatfield Manufacturing Company, protestant.

R. W. Campbell for J. W. Butler Paper Company, protestant.

T. G. Smiley for Northern New York Traffic Association, protestant.

S. G. Shepard for Ontario Paper Company of Canada, protestant.

C. W. Nash for A. P. W. Paper Company and other protestants.

F. E. Kessinger for International Purchasing Company and other protestants.

J. L. O'Brien for Lake Superior Paper Company and other protestants.

Isaac Born and A. B. Cronk for La Fayette Box Board & Paper Company and other protestants.

A. D. Huff for Laurentia Company, Limited, and other protestants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In the schedules under suspension in this proceeding the respondents propose to increase their rates on news print paper, printing paper, wrapping paper, paper boards, roofing paper, and a number of similar commodities, in official classification territory, and numerous manufacturers of paper, newspaper associations, and others interested in these rates have protested.

Paper is produced in large quantities in various parts of official classification territory and the competition between the manufacturers is unusually keen. In practically all the larger producing sections the output exceeds the consumption and the manufacturers in search of wider markets are constantly invading each other's territory. Although printing paper, for example, is manufactured

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extensively both in New England and in central freight association territory large quantities are shipped from New England to points of consumption in the latter territory; in much smaller quantities it is also shipped from central freight association territory to New England. All the manufacturers claim the whole country as their proper market.

The various kinds of paper involved in this proceeding may be roughly divided into four classes: (1) News print paper; (2) printing and wrapping paper; (3) paper boards, including strawboard, pulpboard, chip board, binder's board, and box board; (4) building and roofing paper. This list is by no means exhaustive, but most of the evidence was addressed to the reasonableness of the rates on these particular products of the paper mills, and the grouping of the principal kinds of paper as here suggested will be helpful in discussing the situation before us. Among the other kinds of paper, the rates on which are in issue, are blank wall paper, blotting paper, carpet lining, blank register paper, cardboard, tag board, and paper bags.

For some years the rates on paper have not been satisfactory either to the carriers or to the shippers. In a number of instances they have been reduced under the pressure of large shippers or as a consequence of the competition between carriers for the traffic. The result is a rate structure showing charges which the carriers deem too low and which is replete with inequalities and inconsistencies. The adjustment of rates from New England to the west has been illogical at least since 1900, when the so-called differential lines operating through Canada established the relatively low rate of 18 cents per 100 pounds on news print paper from certain points in New England to Chicago. The demands of shippers and the competition between carriers soon brought about reductions in the rates on other kinds of paper either to or toward the 18-cent scale.

The numerous increases and reductions in the westbound rates since 1900 clearly show, on the one hand, the efforts made by the carriers to increase the rates to a more remunerative basis, and, on the other hand, the desire of shippers to obtain further abatements in their freight charges. The frequent changes in the rates on various kinds of paper from New England threw those rates out of line, not only with the rates on the same kinds of paper eastbound, but with the rates westbound from points of production in the middle Atlantic states. The reductions in the westbound rates permitted the New England manufacturers to sell large quantities of paper in central freight association territory, and the rail carriers in that territory reduced the rates eastbound for the purpose of assisting the western manufacturers to offset the increased competition from New England. It is not to be understood, however, that these various reductions

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resulted in uniformity in the rates. On the contrary, they were made in such piecemeal fashion as to cause both confusion and dissatisfaction.

The unsatisfactory character of the rates has occasioned numerous conferences among the shippers and between the shippers and the carriers, but without resulting in any substantial improvement in the rate adjustment. As a matter of fact the formal complaints which were heard with this proceeding are based largely upon the lack of uniformity in the respondents' rates, classifications, and descriptions. The rates on printing and book paper, for example, from points in central freight association territory to points in New England, have for a number of years been on a lower basis than the rates on the same kinds of paper in the opposite direction. This led the New England manufacturers to file their complaint in *New England Paper & Pulp Traffic Association v. Boston & Maine Railroad* and others, which was heard herewith and in which they seek, among other things, an equalization of the eastbound and westbound rates. Again, the New England carriers have been accustomed to distinguish between printing and book papers made wholly of wood pulp and those containing other ingredients, the former taking sixth-class rates and the latter fifth-class rates. The carriers in central freight association territory, on the other hand, have not attempted to make this distinction, the rates on all kinds of printing and book paper within central freight association territory, and from central freight association territory to the east, being the same. The New England producers feel that this, too, gives an undue advantage to their competitors in central freight association territory.

In *Pulp & Paper Manufacturers Traffic Association v. Akron, Canton & Youngstown Railway Company* and others, also heard upon this record, the complainant attacks the rates from points in Wisconsin to points in Indiana, Michigan, Ohio, Kentucky, West Virginia, Pennsylvania, and New York as being unreasonable and unjustly discriminatory. In *Michigan Paper Mills Traffic Association v. Alabama & Vicksburg Railway Company*, now pending, the complainant, an association of Michigan manufacturers, alleges that the rates on paper from their mills to various points to the south and west, particularly in central freight association territory, are unreasonable and unjustly discriminatory. That case was separately heard and will be disposed of in another report.

It was for the purpose of removing these and other inconsistencies in the rate adjustment that the carriers in official classification territory filed the tariffs here under investigation. The general readjustment proposed is to apply sixth-class rates, or commodity rates equal to the current sixth-class rates, on most kinds of paper both eastbound and westbound, paper being generally rated fifth class, in carloads, in

official classification. To accomplish this result it was necessary to reduce the rates on those kinds of paper which were higher than sixth class, and to increase the rates on those kinds of paper which were lower than sixth class. As only a few kinds of paper take higher rates than sixth class, the increases proposed are decidedly more numerous than the reductions. There are important departures, however, from the general scheme proposed by the carriers, the principal exceptions being the rates on news print paper and paper boards; and these will be discussed in detail later.

At the hearing the respondents offered to amend the proposed tariffs so as to remove one of the principal causes of protest. The suspended tariffs proposed to apply sixth-class rates on printing paper made entirely of wood pulp and fifth-class rates on printing paper containing other ingredients than wood pulp. This was followed by vigorous protests, especially from producers of paper in central freight association territory. The respondents conceded at the hearing that it was impracticable to make this distinction and expressed their willingness to publish rates, equivalent to the current sixth-class rates, on all kinds of printing paper, regardless of ingredients or value.

At the outset it may be stated that the respondents have not attempted to justify the proposed increased rates on the ground that they are in need of additional revenue. They rely solely on the contention that the present rates are, under all the circumstances and conditions surrounding the traffic, unduly low, and that the general application of the sixth-class basis on printing paper is the only feasible method of attaining the desired uniformity in the rate adjustment.

THE MANUFACTURE OF PAPER.

Before discussing the rates on particular kinds of paper it may be well to outline briefly how paper is made. The same general method is used in manufacturing all kinds of paper, the difference in grades and kinds being effected by substituting one ingredient for another or by changing the proportions of the ingredients. Nearly all kinds of paper contain more or less wood pulp, many of the larger manufacturers owning their own supply of spruce timber and manufacturing their own pulp. The spruce wood is brought to the pulp mill, where machines chip it into small pieces, which are then carried to large steel tanks called digesters. A chemical liquor is poured over them, steam is injected into the tanks, and the mixture is "cooked" for several hours. This dissolves the resinous matter holding the fibers of the wood together, and they fall apart. When the mixture is thoroughly cooked the liquor is drawn off and the "sulphite pulp" is washed and screened, after which it is passed into other tanks for bleaching. It is then carried to the "beaters," where it is reduced

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to the proper consistency. At this stage clay, resin, coloring matter, or any other ingredients designed to give the paper individuality, may be added. It is then ready for the paper machine. The pulp is thrown upon wire screens, the water is drained off, the wet sheets of pulp are picked up and thrown over driers, and finally pressure is applied, forming the sheets of paper. To improve the surface of the paper it may be passed between heavy steel rolls. It is then called "supercalendered" printing paper; or it may be subjected to a coating process, after which it is called "surface-coated" printing paper.

Instead of the "chemical" or "sulphite" pulp, made as above described, "mechanical" pulp is sometimes used. This is made by grinding the wood, without the use of chemicals. News print paper consists of 70 or 80 per cent ground wood and 20 or 30 per cent of unbleached sulphite pulp.

The production of various kinds of paper in the United States for the years 1909 and 1914 is shown in the following table:

Kind of paper.	Production in 1909.	Estimated production in 1914.	Kind of paper.	Production in 1909.	Estimated production in 1914.
	<i>Tons.</i>	<i>Tons.</i>		<i>Tons.</i>	<i>Tons.</i>
News print.....	1,176,000	1,353,634	Writing.....	198,000	200,000
Wrapping.....	764,000	800,000	Miscellaneous.....	104,000	(¹)
Boards.....	832,000	(¹)	Hanging.....	92,000	(¹)
Book (printing).....	746,000	770,000	Tissues.....	78,000	85,000
Building and roofing.....	218,000	(¹)	Blotting.....	10,000	16,000

¹ No figures available.

THE RATES ON NEWS PRINT PAPER.

News print paper constitutes more than 25 per cent of the total amount of paper produced in the United States, the annual production of news print exceeding 1,000,000 tons, as shown above. The normal production in the United States is said to be approximately 4,940 tons daily, divided as follows: New England and New York, 3,745 tons; Wisconsin, 445; Michigan, 50; Ohio, 17; Minnesota, 375; Pacific coast, 308. It will be seen that by far the heaviest production is in New England and New York, where more than 75 per cent of the country's total tonnage is manufactured. From the mills in this section news print paper is shipped to almost every part of the country. Two companies with mills in New York and New England produce approximately 40 per cent of the country's total annual tonnage. There are only two mills in central freight association territory which produce news print paper, one being located at Alexandria, in the state of Indiana, and the other at Cheboygan, in the state of Michigan. It is also manufactured in Wisconsin and Minnesota, and in 1914 over 310,400 tons were imported from Canada. News print paper produced in New York and New England is sold extensively

in central freight association territory, as stated, but the tonnage moving from central freight association territory to the eastern cities is almost negligible. A representative of one of the New England companies testified that his company does not feel the competition of the Minnesota mills at points east of Cleveland, or of the Wisconsin mills at points east of Pittsburgh. One witness testified that 70 or 75 per cent of the news print paper used in Ohio, Michigan, Indiana, and Illinois is produced in eastern mills.

Practically all the news print paper shipped to the west from New England and northern New York moves over the so-called differential all-rail routes. Class rates from Boston and Boston rate points to points in central freight association territory, lower than the rates maintained by the so-called standard lines, are published by the Canadian lines, notably the Grand Trunk and the Canadian Pacific. A number of the New England lines, such as the Boston & Maine, the Central Vermont, and the Maine Central, participate as initial carriers in the differential rates. The standard and differential class rates from Boston to Chicago, Ill., are as follows:

Classes.....	1	2	3	4	5	6
Standard.....	78.8	68.3	52.5	36.8	31.5	26.3
Differential.....	73.8	64.3	49.5	33.8	29.5	25.3

In 1900 the Grand Trunk, one of the carriers participating in the differential class rates, established a commodity rate of 18 cents¹ on news print paper from Berlin, in the state of New Hampshire, to Chicago. Competition between manufacturers and between carriers soon led to the establishment of the same rate from other points in New England, in northern New York, and in Canada. This resulted in the formation of an enormous rate blanket, which extended, and still extends, from Espanola, Canada, just north of Lake Huron, to Woodland, in the state of Maine, a distance of approximately 1,000 miles, and from Watertown, in the state of New York, almost as far north as Quebec, the rate of 18 cents to Chicago applying from all the news print mills within that territory. At present the rate is 18.9 cents, having been increased as a result of the Commission's conclusions in *The Five Per Cent Case*, 32 I. C. C., 325. Although the blanket is very large, by far the heaviest production is in the much smaller area heretofore mentioned in northern New York and northern New England.

The differential lines published correspondingly low rates from points within the blanket to other points in central freight association territory. The 18-cent rate is said to have been initiated by the Grand Trunk because of the unusually large number of empty cars which that carrier was hauling from the eastern seaboard to the west.

¹All rates in this report, unless otherwise stated, are the carload rates, in cents per 100 pounds.

It was so much lower than the rates maintained by the standard lines that practically all news print paper was soon diverted to the differential routes, and at the present time less than 1 per cent of the paper shipped to the west from this blanketed territory moves over the standard routes. The rates of the standard lines are on the basis of 23.1 cents from New York City to Chicago. The differential routes are in most instances longer than the standard routes, and the service from New England to Chicago is from 24 to 48 hours slower.

In the suspended tariffs it is proposed to increase the differential lines' blanket rate to Chicago from 18.9 cents to 21 cents, and to reduce the New York-Chicago rate maintained by the standard lines from 23.1 cents to 23 cents, narrowing the spread between the differential rates and the standard rates. The rates to other points in central freight association territory are graded on the percentage system.

For a number of years the rates on nearly all kinds of paper, including news print paper, from points in central freight association territory to trunk line territory have been based on a rate of 20 cents from Chicago to New York, increased to 21 cents as a result of the Commission's conclusions in *The Five Per Cent Case*, *supra*. Within central freight association territory the rates on news print paper are on the sixth-class basis, and the carriers do not propose to increase them.

As previously stated, the two mills at Alexandria and Cheboygan are the only mills in central freight association territory which produce news print paper. It is proposed in the suspended tariffs to increase the rates from Alexandria to eastern points from the 21-cent basis, from Chicago to New York City, to the sixth-class basis, or 26.3 cents. It is proposed to increase the rates from Cheboygan to eastern points from the 21-cent basis to the sixth-class basis, the sixth-class rates from Chicago, however, to be observed as the maximum rates, although Cheboygan is a 120 per cent point.

All the witnesses agreed that there is a well-defined line of demarcation between news print paper and other kinds of paper. Unlike other kinds of paper, it is of uniform grade, its present market price being approximately \$40 per ton. The record clearly shows also that it is a highly desirable commodity from the transportation standpoint. It moves in greater volume than any other kind of paper; its carriage results in few claims for loss and damage; and the average loading is approximately 47,000 pounds per car. The cars are invariably loaded by the shippers at their own expense and are carefully lined by them to prevent injury to the paper in transit. The use of this kind of paper by publishers of daily newspapers insures a steady production, and the respondents admit that it "moves in

tremendous quantities and with clock-like regularity," some mills shipping 20 or 25 carloads per day.

The protests against the proposed increased rates on news print paper were made principally in behalf of publishers of newspapers, who maintain that they would ultimately bear the increased costs resulting from increases in the freight rates. They show that the price at which newspapers are sold is more or less determined by custom, and that in most instances it is highly undesirable, if not impossible, to raise the selling price. Competition between advertisers is also said to be severe, and there has been such a marked decline in the amount of advertising space sold during the past year that the publishers consider it impossible to increase advertising rates at the present time. The producers of news print paper admit that in most instances they would not be directly affected by an increase in the rates, it being customary for the publishers to pay the transportation charges.

From Ticonderoga, in the state of New York, which is in the news print blanket, the distance to Chicago by the differential route is 947 miles. Based on this distance the rate of 18.9 cents yields a revenue per ton-mile of 3.99 mills. Based upon an average loading of 47,000 pounds, the car earning is \$88.83, and the revenue per car-mile 9.38 cents. If a point in New Hampshire or Maine is chosen the earnings per ton-mile and per car-mile will, of course, be materially less. From Millinocket, in the state of Maine, the distance from which to Chicago by the Canadian Pacific differential route is 1,170 miles, the earnings per ton-mile are 3.23 mills; per car-mile, 7.59 cents. Berlin, in the state of New Hampshire, one of the largest producing points, is located near the center of the blanket. Its proposed rate of 21 cents to Chicago, 1,038 miles, will yield 4.05 mills per ton-mile and 9.5 cents per car-mile.

Although the protestants lay considerable stress on the desirability of news print paper from the carriers' point of view, a number of their witnesses admitted, in substance, that the blanket rate of 18.9 cents is somewhat low. Indeed, the protestants represented by the Paper Manufacturers' Traffic Committee have submitted for our consideration a scheme of rates in which they suggest that 20 cents would be a reasonable rate on news print paper from New England to Chicago. The chairman of that committee, referring to the present blanket rate, said: "I have always felt it was a low rate." In *The New England Investigation*, 27 I. C. C., 560, 575, in discussing the relatively low rates on some commodities from New England points, the Commission said:

Rates upon the products of New England to markets of consumption in other parts of the country are usually low. This is sometimes due to the voluntary act of the carriers in order to put the manufacturer of New England upon a competitive basis

with the nearer producing point, of which paper is an illustration. The rate on that commodity from producing points in Maine to Chicago is 20 cents per 100 pounds for a haul of approximately 1,300 miles.

Although the present rate may be somewhat low, as contended by the respondents, the Grand Trunk and the Canadian Pacific have submitted no evidence upon which we may hold that the proposed rate of 21 cents has been justified, the burden of establishing the propriety of the proposed rate having been left to the New England lines. Indeed most of the evidence of record as to the transportation conditions surrounding the traffic has been presented by the protestants rather than by the respondents. News print paper moves in large volume from the mills, as we have stated. The loading is reasonably heavy, and claims for loss and damage are small, as heretofore explained. It should be noted also, for such value as the fact may have, that the 18-cent rate was maintained by the respondents for 15 years prior to the filing of the tariffs under suspension. Weighing carefully all the evidence adduced of record by all the parties in interest we find and conclude that a reasonable base rate from points in the blanket to Chicago will not, for the future, exceed 20 cents per 100 pounds.

A division of the news print blanket has been suggested, taking the boundary line between the states of New York and Vermont as the dividing line, and making the rate from points east of that line 1 cent higher than from points west of the line. This suggestion is vigorously opposed by the Great Northern Paper Company, whose mills are in New England; and we do not find sufficient evidence of record to warrant any such change in the present blanket adjustment.

But little evidence has been submitted by the respondents in support of the proposed increased rates on news print paper from Alexandria and Cheboygan to points in the east. An exhibit filed on behalf of the Alexandria mill shows that 34 carloads of news print paper were shipped from that point to eastern destinations in 1914; that the average distance was 822.2 miles, the average earnings per car-mile 10.6 cents, and the average revenue per ton-mile 4.5 mills. The increase from the present 21-cent basis to sixth class, 26.3 cents, is material, and the proposed rates from these points are considerably higher than either the present rate or the proposed rate from the eastern blanket to the west. In dealing with the rates westbound the respondents admit that news print paper is less valuable than printing paper, that it is readily distinguishable from other kinds of paper, and that it is entitled to rates somewhat lower. The same reasoning should apply to the rates in the opposite direction. Upon the facts adduced of record we conclude and find that the respondents have failed to establish the reasonableness of the proposed increased rates on news print paper eastbound from Alexandria and Cheboygan.

THE RATES ON PRINTING AND BOOK PAPER.

The competition between the manufacturers of printing and book papers is unusually severe, probably because the mills producing them are so widely scattered, and because they are endeavoring, in many instances, to reach the same markets. The descriptive adjectives "printing" and "book" are interchangeably applied to this kind of paper, which will be referred to hereinafter as printing paper. The expression "printing paper" does not include news print paper, which is treated in the tariffs of the carriers as a separate commodity, and which is so regarded commercially. The principal points of production of printing paper in official classification territory are in northern New York, in the Hudson River Valley, in New England, in Michigan, and in a territory extending from central Pennsylvania south to Big Island, in the state of Virginia. Printing paper is also produced in Wisconsin, and the competition between the Wisconsin and Michigan mills is keen, especially in central freight association territory. In *Michigan Paper Mills Traffic Association v. Alabama & Vicksburg Railway Company* and others, now pending, the Michigan manufacturers alleged that the rates were so constructed as to give an undue advantage to their Wisconsin competitors.

For a number of years the rates on printing paper eastbound have been on a lower basis than the rates westbound. Since 1905 the Chicago-New York basis has been 20 cents per 100 pounds, increased to 21 cents following the Commission's decision in *The Five Per Cent Case, supra*. The 20-cent basis was 80 per cent of sixth class.

In 1902 the rates on plain printing paper, westbound, as published by the standard lines, were on a sixth-class basis, the differential basis being 22 cents. In 1904 the rate on printing paper, other than enameled, glazed, or surface coated, was reduced to 21 cents by the differential lines. In 1909 both the standard lines and the differential lines increased the rates to the classification basis, fifth class. A few months later commodity rates, equivalent to the sixth-class rates, were established on the lower grades of printing paper, made of wood fiber, making the rates 25 cents by the standard lines and 24 cents by the differential lines. In 1910 both the standard lines and the differential lines reduced their rates on printing paper made entirely of wood pulp to 1 cent less than sixth class. In 1913 the rates on printing paper made entirely of wood pulp were again increased to sixth class, 25 cents standard, 24 cents differential, the higher grades of paper remaining on the fifth-class basis; and these rates remained in effect until they were increased by 5 per cent as a result of the Commission's decision in *The Five Per Cent Case, supra*.

The difference between the rates eastbound and westbound was one of the matters brought to the Commission's attention in New

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England Paper & Pulp Traffic Association v. Boston & Maine Railroad and others, heard herewith as stated. In that case, as previously explained, it is also alleged that the application of fifth-class rates to the transportation of printing paper containing other ingredients than wood pulp is unreasonable and unjustly discriminatory, especially in view of the fact that commodity rates less than the current sixth-class rates are applied on eastbound traffic. Even with the advantage of a lower basis of rates eastbound, however, the producers of printing paper in central freight association territory have been unable to reach the eastern markets with much success, while the New England manufacturers and those in the middle Atlantic states have been able to dispose of large quantities of printing paper west of Pittsburgh. The reasons for this are not clearly shown of record. One explanation made was that labor is cheaper and more abundant in the east than in the west, and that the eastern mills are nearer to the raw materials, such as pulp and imported clay and dyes. The production in New England greatly exceeds the production in central freight association territory.

The respondents propose to put the rates on printing paper, both eastbound and westbound, on the sixth-class basis, with a few exceptions to be noted later. They say that this adjustment was proposed not only because the carriers and the shippers both realized the necessity of adopting a uniform scheme of rates, but because, according to the respondents, the sixth-class basis "seemed to be the common level upon which we could meet and make a proper uniform adjustment." The lines in central freight association territory accordingly increased their rates to the east to the sixth-class basis, and the New England carriers agreed to reduce to sixth class the rates on the kinds of printing paper now taking fifth-class rates. The respondents lay emphasis on the fact that the proposed adjustment is the result of a compromise between the carriers. Large quantities of paper have been moving from New England on fifth-class rates, and the New England lines are said to have agreed unwillingly to a reduction in those rates in order to make the whole adjustment uniform.

Printing paper varies in value from \$72 to \$150 per ton. It is shipped in rolls or bundles, the average loading per car from different mills varying from 40,000 to 47,000 pounds. Tight box cars are required. The cars are usually carefully prepared by the shippers, and the loss and damage claims are small. In central freight association territory, and to some extent in the east, paper is handled in fast freight service. It may be said of paper generally that the mills require large quantities of raw material, and the cars which haul the raw products to the mills can often be used for shipments

of paper outbound, giving the carriers a loaded movement in both directions.

In support of their contention that the present rates are low the respondents rely principally on the facts shown in the following table, taken from one of their exhibits. The rates given, unless otherwise specified, are those applying between Chicago and New York. The distance is assumed to be 920 miles.

Commodity.	Rate.	Average loading.	Car-mile revenue.	Ton-mile revenue.	Value per ton.
	<i>Cents.</i>	<i>Pounds.</i>	<i>Cents.</i>	<i>Mills.</i>	
Printing paper.....	26.3	{ 40,000	11.4	5.7	\$72 to \$150.
Brick and clay.....	22.1	{ 45,000	12.8	4.8	\$2.50 to \$5.40.
Asphalt and substitutes.....	23.1	{ 70,000	16.8	5.0	\$5 to \$20.
Paper filler.....	23.1	{ 60,000	15.06	5.0	\$15 to \$18.
Lime.....	23.6	{ 55,000	14.06	5.1	\$4.50 to \$8.
Waste paper and rags.....	25.3	{ 50,000	12.8	5.7	\$8 to \$20.
Cement.....	21	{ 24,500	7.0	4.5	\$8.
Wooden handles.....	31.5	{ 40,000	11.4	6.8	\$600 to \$1,000.
Beans.....	31.5	{ 50,000	17.1	6.8	\$1,000. ¹
Lignum liquor.....	29.3	{ 40,000	13.6	5.7	\$25.
Iron and steel.....	31.5	{ 42,000	14.3	6.8	\$30.
		{ 65,000	23.9		
		{ 70,000	25.7		

¹ Proposed sixth-class rate.

² Fifth-class rate.

³ Per car.

A number of other commodities are also named, the rates on which from Chicago to New York, or vice versa, are shown to be as high as, or higher than, the proposed rates on printing paper. Among these are asphalt shingles, the rate on which is 26.3 cents; white lead, 26.3; fertilizer, 26.3; slate roofing, 26.3; live cattle, 29.4; potatoes, 31.5. Some of the commodities in this list, and in the preceding table, are decidedly less valuable than paper. The protestants maintain that a number of these commodities are not at all analogous to paper, and that they do not move in such volume as paper. Witnesses for the carriers testified, however, that some of the commodities named move in large volume in official classification territory.

The respondents show that the sixth-class basis now applies on printing paper within central freight association territory, and that the rates from New England to the west are sixth class, and in some instances fifth class.

The principal increases proposed are in the eastbound rates. The following table, taken from one of protestants' exhibits, shows the present and proposed rates on printing paper from Kalamazoo to six representative destinations in the east, together with the distances and the earnings:

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From Kalamazoo, Mich., to—	Rate.	Earnings per ton- mile.	Earnings per car. ¹	Earnings per car- mile. ¹
<i>Boston, Mass. (810 miles):</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>
Present.....	22.2	5.48	\$88.80	10.96
Proposed.....	27.2	6.73	108.80	13.43
<i>New York, N. Y. (776 miles):</i>				
Present.....	20.2	5.20	80.80	10.41
Proposed.....	25.2	6.49	100.80	12.99
<i>Philadelphia, Pa. (781 miles):</i>				
Present.....	18.2	4.66	72.80	9.23
Proposed.....	23.2	5.94	92.80	11.88
<i>Washington, D. C. (712 miles):</i>				
Present.....	17.2	4.83	68.80	9.66
Proposed.....	22.2	6.23	88.80	12.47
<i>Syracuse, N. Y. (628 miles):</i>				
Present.....	16.7	6.33	66.80	12.64
Proposed.....	20.2	7.65	80.80	15.30

¹ Based upon weight of 40,000 pounds.

Upon consideration of all the evidence we are of opinion and find that the respondents have established the propriety of the proposed increased rates on printing paper.

Some of the protestants, especially those whose mills are located in central freight association territory, call our attention to the fact that the general application of sixth-class rates will not result in absolute uniformity in the rates in opposite directions. The sixth-class rate from Boston to Chicago, for example, is 26.3 cents, the same as the rate from New York, but the sixth-class rate from Chicago to Boston is 28.3 cents, 2 cents higher than the rate to New York. The respondents show, however, that the adjustment of class rate eastbound and westbound is of long standing, and we would not be warranted, on the evidence of record, in departing from it.

Considerable comment has resulted from an important exception to the sixth-class basis which the respondents have voluntarily incorporated in the proposed adjustment. Printing paper is produced in large quantities at a number of points in central Pennsylvania, western Maryland, and in parts of Virginia and West Virginia. The principal points of production are Lock Haven, Tyrone, Williamsburg, and Roaring Spring, in the state of Pennsylvania; Cumberland and Luke, in the state of Maryland; Piedmont, in the state of West Virginia; and Covington, Big Island, and Buena Vista, in the state of Virginia. The same rates on paper apply from all these mills to points in central freight association territory, the points of origin being grouped. The blanket thus formed is said to be approximately 400 miles long, north and south, and 150 miles wide.

In the suspended tariffs it is proposed to apply sixth-class rates on printing paper from points in this group to most points in central freight association territory north of the Panhandle-Vandalia line, extending through Columbus and Indianapolis to St. Louis, Mo. To points in central freight association territory on and south of the Panhandle-

Vandalia line the suspended rates are in almost all instances below the sixth-class basis. Some of the protestants maintain that the sole object of this adjustment is to give an undue preference to these mills, and that the respondents, having chosen to propose the general application of the sixth-class rates as a solution of this problem, should adhere rigidly to that basis. To this the carriers reply that by reason of the favorable geographical location of these mills they are entitled to rates which are somewhat below the level that would result from the general application of the sixth-class basis.

In the construction of class rates from points in the east to points in central freight association territory, the points of origin are embraced in irregular groups, the rates from which bear a fixed relation to the class rates between New York City and Chicago. Most of the mill points above named are in the so-called Williamsport and Cumberland rate groups. As the class rates from both of these groups are equivalent to 77 per cent of the New York-Chicago scale, they may be considered as constituting one rate group, which will be referred to hereinafter as the Williamsport-Cumberland group. Before the establishment of this group the class rates from these points were the same as those from Baltimore, 200 miles farther east. The class rates from Covington, Buena Vista, and Big Island are on the Lynchburg basis, the class rates from Lynchburg being slightly higher than those from the Williamsport-Cumberland group. The rates on paper from Covington, Big Island, and Buena Vista, however, are the same as those from the mills in the Williamsport-Cumberland group. The paper rate group thus constituted, including all of the points of production in the Williamsport-Cumberland group, as well as the producing points in Virginia, will be referred to as the Tyrone-Piedmont group. The rates on paper from these mills were established without any regard to the prevailing class rates, and have remained in effect practically without change for 15 years.

In the suspended tariffs it is proposed to increase the rates on printing paper and wrapping paper from points in the Tyrone-Piedmont group to points in central freight association territory on and south of the Panhandle-Vandalia line, to the Syracuse sixth-class basis. The class rates from Syracuse to points in central freight association territory are 70 per cent of the New York-Chicago scale. There appears to be no reason for the application of the Syracuse sixth-class rates from points in this group, other than the desire of the respondents to give these mills a basis of rates somewhat lower than the 77 per cent scale which would seem logically to apply.

The following table, compiled principally from exhibits filed by the protestants, compares the present and proposed rates on printing paper, and the sixth-class rates, from representative points in the

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Williamsport-Cumberland group to points in central freight association territory, with the present and proposed rates for similar distances from other points:

From—	To—	Miles.	Present rate.	Proposed rate.	Sixth class.
			<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Tyrone, Pa. ¹	Cincinnati, Ohio.....	428	13.7	16.0	17.6
Lock Haven, Pa. ¹	do.....	493	13.7	16.0	17.6
Rumford, Me.	Philadelphia, Pa.....	418	² 24.4	20.8	19.8
Kalamazoo, Mich.	Rochester, N. Y.....	462	16.7	18.6	18.6
Johnsonburg, Pa.	Cincinnati, Ohio.....	468	13.7	16.0	16.0
Tyrone, Pa. ¹	Louisville, Ky.....	556	15.8	18.4	20.3
Lock Haven, Pa. ¹	Indianapolis, Ind.....	558	16.8	17.2	18.9
Roaring Spring, Pa. ¹	Louisville, Ky.....	567	15.8	18.4	20.3
Rumford, Me.	Rochester, N. Y.....	566	² 22.4	18.8	17.8
Hamilton, Ohio	Washington, D. C.....	578	15.3	19.9	19.9
Piedmont, W. Va. ¹	St. Louis, Mo.....	711	19.4	21.6	23.7
Roaring Spring, Pa. ¹	do.....	745	19.4	21.6	23.7
Kalamazoo, Mich.	Albany, N. Y.....	676	19.4	24.2	24.2
Hamilton, Ohio	New York, N. Y.....	735	18.9	22.9	22.9
Rumford, Me.	Richmond, Va.....	750	² 34.5	29.3	28.3
Covington, Va. ¹	St. Louis, Mo.....	713	19.4	21.6	23.7
Lock Haven, Pa. ¹	do.....	799	19.4	21.6	23.7
Kalamazoo, Mich.	Baltimore, Md.....	712	17.2	22.2	22.2
Piedmont, W. Va. ¹	Cincinnati, Ohio.....	872	13.7	16.0	17.6
Plainwell, Mich.	Louisville, Ky.....	376	13.7	18.7	18.7

¹ Point is in Tyrone-Piedmont group as to rates on printing paper westbound.

² Applies on enameled, glazed, and surface-coated papers.

This table shows that the present rates from points in the Tyrone-Piedmont group are materially lower than the rates from some other points in official classification territory for similar distances; that the proposed rates from the group are less than the sixth-class rates, the difference averaging approximately 2 cents per 100 pounds, and that commodity rates on paper from points in this group, on the full sixth-class basis, would not, in most instances, be higher than the rates paid by shippers whose mills are located in other parts of the territory. It will be observed that the sixth-class rate to Louisville from Plainwell, in the state of Michigan, at which point one of the protestants' mills is located, is more than 3 cents lower than the sixth-class rate from Piedmont to Cincinnati, for approximately the same distance.

The respondents stated at the hearing that they propose to increase the rates on paper from the Tyrone-Piedmont group to most points north of the Panhandle-Vandalia line to the full sixth-class basis, and that it is only in the territory on and south of that line that it is proposed to give these mills rates lower than sixth class. An examination of the tariffs shows, however, that rates lower than sixth class are proposed to a large territory north of that line, including nearly all of the state of Illinois.

The protestants whose mills are located in this group insist that the class rates from the Williamsport-Cumberland group are high. They show that the sixth-class rates from these groups to points in central freight association territory are higher than the sixth-class rates from Syracuse, although the distances from Syracuse

are considerably greater. The sixth-class rate from Syracuse to Cincinnati, for example, is 16 cents, for a distance of 575 miles, whereas the sixth-class rate from Piedmont to Cincinnati is 17.6 cents for a distance of only 372 miles. Whether this disparity is due to the fact that the class rates from the Williamsport-Cumberland group are too high, or those from Syracuse too low, or whether the difference is properly attributable to differences in transportation conditions, is not shown of record. An exhibit filed by the protestants indicates that the Williamsport-Cumberland and Syracuse rate groups are exceedingly irregular in outline. The evidence of record as to the reasonableness of the class rates from these groups is so meager, however, that we are unable to approve the proposed departure from the sixth-class basis. If it is true that the class rates from the Williamsport-Cumberland group are unreasonably high, that fact should be brought to the attention of the Commission in another proceeding.

The principal witness for the New England manufacturers, who for nine years was the traffic manager for a number of mills in the Tyrone-Piedmont group, testified that the rates on paper from points in this group were originally much higher than they now are; that prior to 1900 a large paper and pulp mill was built at Covington, in the state of Virginia; that a contract was entered into between the owners of that mill and the Chesapeake & Ohio Railway which provided for relatively low rates from Covington to points in central freight association territory; and that the present rates from points in the Tyrone-Piedmont group resulted from the spreading of the Covington rate to other points as new mills were constructed. The West Virginia Pulp & Paper Company is the largest producer of paper in the Tyrone-Piedmont territory. Its mills at Piedmont, in the state of West Virginia, Covington, in the state of Virginia, Tyrone and Williamsburg, in the state of Pennsylvania, and Mechanicville, in the state of New York, produce 500 tons of paper daily.

There is no satisfactory explanation of record for the selection of the Panhandle-Vandalia line as the northern boundary of the territory to which it is proposed to establish the lower rates from mills in this group. The principal reason given by the respondents for the lower rates from these points is that the geographical location of the mills warrants it, an explanation which is too general in character to be convincing. No reasons are given for the lower rates to points in Illinois north of the Panhandle-Vandalia line.

Upon the evidence of record we are unable to approve the proposed rates from points in the Tyrone-Piedmont group. To do so would be to sanction an adjustment which is unjustly discriminatory. If sixth-class rates are to be generally applied from other producing points, the sixth-class rates from the Williamsport-Cumberland group

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should also be established from the mills now included in the Tyrone-Piedmont group.

A separate brief has also been filed on behalf of the New York & Pennsylvania Company, which owns paper mills at Johnsonburg and Lock Haven, both in the state of Pennsylvania. That company, like the protestants whose mills are in the Williamsport-Cumberland group, calls the Commission's attention to the percentages of the increases in some of the rates. The rates from Lock Haven, which is in the Tyrone-Piedmont group, have already been considered. The rate from Johnsonburg to Cleveland will be increased from 8.9 cents to 12.6 cents, or 41.5 per cent, if the suspended schedules are permitted to take effect, and several of the rates are increased more than 20 per cent. In this situation, however, as in the one previously discussed, it is necessary to consider the reasonableness of the proposed rates rather than the percentages of increase. The following table, taken from protestants' exhibits, shows that the present rates from Johnsonburg to some points of consumption are lower, for similar distances, than the rates from Kalamazoo or from Piedmont. It further shows that the suspended rates from Johnsonburg compare favorably with those from the other two points:

From—	To—	Miles.	Present rate.	Proposed rate.
			<i>Cents.</i>	<i>Cents.</i>
Johnsonburg, Pa.....	Cleveland, Ohio.....	206	8.9	12.6
Kalamazoo, Mich.....	do.....	245	12.1	12.1
Johnsonburg, Pa.....	Detroit, Mich.....	376	10.5	14.4
Kalamazoo, Mich.....	Buffalo, N. Y.....	379	14.7	14.7
Piedmont, W. Va.....	Cincinnati, Ohio.....	372	13.7	16.0
Johnsonburg, Pa.....	Boston, Mass.....	670	15.8	15.8
Kalamazoo, Mich.....	Albany, N. Y.....	675	19.4	24.2
Piedmont, W. Va.....	Chicago, Ill.....	662	18.0	20.3
Johnsonburg, Pa.....	St. Louis, Mo.....	742	19.4	21.6
Piedmont, W. Va.....	do.....	710	19.4	21.6
Kalamazoo, Mich.....	Washington, D. C.....	712	17.2	22.3

Although the class rates from Johnsonburg, westbound, are on the Syracuse basis, the rates on paper from Johnsonburg to points in central freight association territory have been, theoretically, on the Buffalo basis, which is materially lower than the Syracuse basis. Some of the rates, however, are even less than the Buffalo sixth-class rates. The record shows that from Johnsonburg "the 18-cent sixth-class rate is cut to 15 cents by reason of railroad competition for the large tonnage of the mill located there." These rates do not include the recent 5 per cent increase. Johnsonburg is served by the Pennsylvania Railroad, the Erie Railroad, and the Buffalo, Rochester & Pittsburgh Railway. In the brief filed on behalf of the New York & Pennsylvania Company it is stated that "there has been considerable competition among the carriers for this protestant's business at John-

sonburg," and a comparison of the rates from Johnsonburg with the rates from other mills, and with the sixth-class rates from Johnsonburg, shows the effect of that competition.

As stated above, the class rates from Johnsonburg to points in central freight association territory are on the Syracuse basis, and the effect of the proposed tariffs is to increase the rates on paper from Johnsonburg to the Syracuse sixth-class basis. While this results in material increases the record shows that the present rates are relatively low.

Most of the rates on printing paper from Johnsonburg to eastern points are approximately on the Buffalo sixth-class basis. In the suspended tariffs those rates which are below the sixth-class basis are increased to sixth class. The rates to Boston, New York, and Philadelphia are only slightly below sixth class, and the increases amount to less than 1 per cent. The present rates to Washington and Richmond are considerably less than sixth class, and the increases which were necessary to raise them to the sixth-class basis are material. There is apparently no reason, however, why the rates to Washington and Richmond should be less than sixth class, especially since the rates to other eastern points are already on that basis, or approximately so. Upon all the facts disclosed of record we find that respondents have established the reasonableness of the proposed rates from Johnsonburg.

East of the Tyrone-Piedmont group is another group including Chambersburg, Cly, Spring Grove, York, and York Haven, in the state of Pennsylvania. These points are north and northwest of Baltimore, and commonly take the Baltimore rates. The rates on paper from this group are at present on the Syracuse sixth-class basis, and in the suspended tariffs they are restored to the Baltimore basis. The record does not show why the Syracuse sixth-class rates are at present observed as maximum rates from these points. It does not appear that these mills, like those in the Tyrone-Piedmont group, are given lower rates to points in the southern part of central freight association territory. Upon the evidence of record we conclude and find that the propriety of the proposed rates has been established.

THE "COMMITTEE PLAN."

For a number of years the manufacturers of paper have been endeavoring to eliminate the inconsistencies in the present rate adjustment. Under the leadership of the traffic manager of the Wisconsin mills, representatives of a number of the principal paper manufacturers in official classification territory have held numerous conferences, both among themselves and with the carriers, in the hope of adopting a scheme of rates that would not only afford reasonable

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revenue to the carriers, but which would be satisfactory to the manufacturers. Gradually these representatives of the paper interests formed themselves into a committee, which they called the Paper Manufacturers' Traffic Committee. There were so many conflicting interests to be dealt with that, in spite of the most earnest efforts, the committee met with only partial success. It did, however, agree upon a scheme of rates which was submitted at the hearing as an alternative plan to that proposed by the carriers. In most instances the rates suggested by the committee are slightly higher than the present rates, and somewhat lower than the sixth-class rates proposed by the respondents.

The distinguishing feature of the so-called "committee plan" is that it proposes to grade the rates on paper, other than news print, according to its invoice value. For this purpose the committee proposes to divide paper into three classes. The first class would embrace all kinds of paper, other than news print paper, whose invoice value at point of shipment does not exceed $2\frac{1}{2}$ cents per pound. The second class would embrace the grades whose invoice value is greater than $2\frac{1}{2}$ cents per pound but not greater than $7\frac{1}{2}$ cents. The grades exceeding $7\frac{1}{2}$ cents per pound in value would come in the third class. This classification of paper is suggested as a basis for distinguishing between the different kinds and grades of paper for rate-making purposes, the committee's contention being that the present descriptions of paper in the respondents' tariffs are meaningless and confusing.

The rates suggested from eastern New England to Chicago over standard routes are as follows: 20 cents on paper whose maximum invoice value is $2\frac{1}{2}$ cents per pound, 23 cents on paper whose invoice value is over $2\frac{1}{2}$ cents but not over $7\frac{1}{2}$ cents, and 28 cents on paper exceeding $7\frac{1}{2}$ cents in value.

The committee's plan has met with the severest criticism at the hands of practically all interests other than those directly represented by it. The producers of printing paper in Michigan and New England are not represented on the committee, and they refuse to subscribe to its recommendations. The committee's recommendations are also unsatisfactory to the American Newspaper Publishers' Association, to manufacturers of news print paper in New England, to a number of manufacturers in Minnesota, and to all the carriers.

The suggestion that the rates be graded according to the value of the paper has been more generally condemned than any other feature of the committee plan. The carriers contend that the adoption of that plan would introduce a highly undesirable element of uncertainty into the rate situation. They show that the invoice value of the same grade of paper differs at different mills and at different

times, and they maintain that the adoption of any plan of basing rates on valuation tends to encourage fraud. Some of the manufacturers admit that they quote lower prices to some customers than to others on the same kind of paper. Furthermore, paper is invariably presented to the carrier in rolls, bundles, or boxes, and the contents of the package are completely hidden from view. It is often impossible for an expert to distinguish one grade of paper from another, even upon chemical analysis. As illustrating this, one manufacturer said at the hearing: "I am always careful not to condemn any paper—it may be my own."

The valuation limits suggested by the committee, $2\frac{1}{2}$ cents and $7\frac{1}{2}$ cents, appear to have been chosen more or less arbitrarily, and while it is true that the production of printing paper exceeding $7\frac{1}{2}$ cents per pound in value is small, nevertheless the manufacturers who do produce the higher grades earnestly insist that the adoption of the valuation plan would cause unjust discrimination. The Michigan producers contend that it would materially increase the freight charges of the manufacturers whose shipments are frequently made in mixed carloads containing some high-grade paper.

The committee contends that many of the kinds of paper which now take different rates are similar in value, differing only in the use to which they are put, and numerous cases are cited in which the Commission has expressed its disapproval of the practice of maintaining different rates on the same commodity when used for different purposes. The same paper, for example, may be used for writing, printing, or wrapping. Even news print paper is sometimes cut into small sheets and made into writing tablets, and a number of the popular magazines are now printed on news print paper. The record shows, however, as previously stated, that news print paper is clearly distinguishable from what is known commercially as printing paper, the distinction being due not so much to the different uses to which these commodities are commonly put as to their difference in value, the ingredients used in their production, and the quantity of movement. The principle that differences in rates should not be predicated solely on the uses to which commodities are put presupposes, of course, like commodities. The rates on writing paper, which moves on fifth-class rates throughout official classification territory, are not involved in this proceeding, and the evidence would not warrant a finding as to the propriety of continuing higher rates on writing paper than on printing paper. While it is true that the same paper may be used either for printing or wrapping, it should be observed that, even under the valuation plan proposed by the committee, printing paper exceeding $7\frac{1}{2}$ cents per pound in value would carry materially higher rates than wrapping

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paper whose invoice value is slightly less than 7½ cents, whereas the rates proposed by the carriers on both printing paper and wrapping paper are on the sixth-class basis. The uniform application of that basis will apparently remove any discrimination as between printing paper and wrapping paper quite as effectively as the valuation plan suggested by the committee.

Although the information submitted by the committee has been helpful, we are unable to find on the evidence of record that its suggestions should be adopted.

THE RATES ON PAPER BOARD AND STRAWBOARD.

Binders' board, box board, chip board, paper stock board, strawboard, and wood-pulp board are similar commodities used principally in the manufacture of shoe boxes, candy boxes, and other containers. Strawboard, as the name indicates, is made of straw; the other kinds, of wood pulp and old paper. The value of boards is decidedly less than that of the other kinds of paper thus far discussed, the average value of boards being \$29 or \$30 per ton, as compared with \$72 to \$150 for printing paper, and \$40 for news print paper. The value of strawboard is said to be lower than the values of the paper boards.

The various kinds of paper boards are manufactured generally throughout official classification territory. They are being substituted for wood in the manufacture of certain kinds of containers, and their production is rapidly increasing. The mills have a tendency to concentrate near the large cities, which constitute the best markets and in which much of the necessary raw material, such as waste paper, can be obtained. Unlike printing paper and news print paper, paper boards move in much greater volume eastbound than westbound, the heavier production being in central freight association territory, while the heavier consumption is in the east. Boards are usually shipped in rolls or bundles, the average loading per car being approximately 50,000 pounds.

The rates on boards within central freight association territory are uniformly 83½ per cent of the sixth-class rates. From central freight association territory to points in trunk line territory the rates are on the same basis as the rates on other kinds of paper, the Chicago-New York basis being 21 cents, approximately 80 per cent of sixth class. The rates on westbound traffic, from trunk line territory to central freight association territory, are on the sixth-class basis. The respondents propose to increase the rates within central freight association territory from 83½ per cent of sixth class to 90 per cent of sixth class, to raise the rates from central freight association territory to trunk line territory from the 80 per cent basis to the 90 per cent

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basis, and to reduce the rates on westbound traffic from sixth class to 90 per cent of sixth class.

The respondents have furnished little evidence as to their earnings on this commodity. Exhibits filed by a few of the protestants show the earnings on shipments of pulpboard and strawboard from their individual mills. The earnings on pulpboard from Kalamazoo for one representative week are shown in the following table, the 44 cars in the first line having been shipped to points in central freight association territory, and the 10 cars in the second line to points in trunk line territory:

Cars.	Average distance.	Average rate.	Average car earning.	Average ton-mile earning.	Average car-mile earning.
<i>Number.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>	<i>Cents.</i>
44	166	7.58	\$41.37	15.56	43
10	662	17.45	75.74	5.55	12

The following table gives similar information with regard to shipments from other mills in central freight association territory for the year 1914:

From—	Average distance.	Cars.	Average rate.	Average car earning.	Average ton-mile earning.	Average car-mile earning.
	<i>Miles.</i>	<i>Number.</i>	<i>Cents.</i>		<i>Mills.</i>	<i>Cents.</i>
La Fayette, Ind.....	458.3	644	13.08	\$66.44	5.7	14.5
Federal, Ill.....	466	314	12.1	65.14	5.1	13.9
Terre Haute, Ind.....	334.9	477	9.4	49.93	5.6	14.9
Coshocton, Ohio.....	429.9	173	14.0	74.61	6.5	17.3

It is interesting to compare the earnings per ton-mile and per car-mile shown in the above table with those submitted by certain carriers in connection with our consideration of *The Five Per Cent Case*, 31 I. C. C., 351, 417. The latter showed, for 590 cars, an average haul of 181 miles, an average revenue of 9 cents per loaded car-mile, and a ton-mile revenue of 3.66 mills. The comparison is especially interesting because paper boards and strawboard are among the lowest grades of paper products and the rates applicable to their transportation on almost as low a basis as any other rates on paper in this territory. It is fair to say that the evidence of record shows the carriers' average earnings on paper in official classification territory to be materially higher than those submitted as representative in *The Five Per Cent Case*, *supra*.

As previously stated, boards are among the lowest grades of paper products. A witness for respondents, in explaining why the carriers do not propose to increase the rates on boards to sixth class, said:

It was possible to draw a distinctive line between boards and papers not only as to their value but also as to competition and market conditions. There is practically

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no competition between the two articles, and the average value of boards is materially lower than the average value of paper.

The protestants call our attention to the fact that, unlike news print paper and printing paper, paper boards are used almost exclusively as a raw material in the manufacture of other products. They move in considerable volume and load more heavily than many other kinds of paper. The present basis of rates in central freight association territory, 83½ per cent of sixth class, has been in effect for more than six years, and the evidence of record does not show that it has proved unremunerative. The rates on boards, like those on other kinds of paper, have recently been increased 5 per cent as a result of our findings in *The Five Per Cent Case, supra*. Upon the facts of record we conclude and find that the respondents have not established the reasonableness of the proposed increased rates. We do find, however, that the proposed reduction in the west-bound rates would put them on a fairer basis, and apparently the basis in trunk line territory, and from trunk line territory to the west, should not be higher than on eastbound interterritorial traffic.

BUILDING AND ROOFING PAPERS.

Building and roofing papers are manufactured quite generally throughout official classification territory. Building paper is used principally for sheathing; roofing paper, in the manufacture of prepared roofing. They are of low value, their average value per ton being approximately the same as that of the paper boards. They are made principally of waste paper and rags. In the manufacture of prepared or composition roofing the roofing paper is saturated in tar or asphalt, and shipped in rolls. The rates on prepared and composition roofing, both in the tariffs now in effect and in the suspended tariffs, are on the same basis as the rates on building and roofing papers.

Both the eastbound and westbound rates on building and roofing papers are on a basis of 21 cents between Chicago and New York. In the suspended tariffs the rates in both directions are increased to sixth class, making the New York-Chicago basis 26.3 cents, an increase of approximately 25 per cent.

In justification of the proposed rates the respondents state that in making their readjustment of the paper rates, the basis of which is the general application of sixth-class rates, they deemed it impracticable to distinguish between building and roofing papers and other kinds of paper. One of the respondents' principal witnesses explained their position as follows:

As far as distinguishing building and roofing papers from the other papers according to their kind or grade is concerned, I think the distinction can be made. But when you come to consider values of building and roofing papers and prepared roofings, they

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must necessarily be carried on the same basis; the values overlap one into the other with the wrapping paper and the printing paper, and I can not see any reason why there should be a distinction made in rates on the building and roofing papers versus the other classes of paper. * * * You can not make the separation.

The record clearly shows, however, that building and roofing papers are in a class by themselves. The respondents do not deny, as the above citation shows, that they are clearly distinguishable from other grades of paper. There is no competition between building and roofing papers and the other kinds of paper involved in this proceeding. In the suspended tariffs the rates on paper boards and strawboard are less than sixth class, the reasons, as given by the respondents' witnesses, being that the paper boards and strawboard are readily distinguishable from other kinds of paper, and that as a general rule their values are lower. The same reasoning applies to building and roofing papers.

While it is true that the values of building and roofing papers are not less, in some instances, than the lowest grades of other papers, it is nevertheless true that the average value is materially less. According to respondents' witnesses the values of these papers are as follows: Building paper, \$22 to \$27.50 per ton; roofing paper, \$21 to \$22.50; composition prepared roofing, \$36 to \$50; asbestos building and roofing papers, \$30 to \$35; asphalt shingles, \$40. Wrapping paper ranges in value from \$25 to \$145 per ton, and printing paper from \$72 to \$150. The average value of building and roofing papers is approximately the same as the average value of the paper boards, and considerably less than the average value of news print paper.

The testimony is somewhat conflicting as to the average loading of building and roofing papers. The respondents state that when shipped in rolls the average is from 30,000 to 35,000 pounds per car, and that when shipped flat it will run as high as 60,000 pounds. Exhibits filed by one protestant show that the average weight per car of 310 carload shipments of roofing paper from Pittsburgh was 37,952 pounds, while on 164 carload shipments of prepared roofing, building and roofing papers and roofing material from the same point was 35,019 pounds. Building and roofing papers are not easily damaged in transit and it is not necessary to ship them in the best cars.

The respondents maintain that the present rates on building and roofing papers in central freight association territory are discriminatory because they are below the sixth-class basis, while the rates on asphalt shingles are uniformly sixth class within that territory. Asphalt shingles are the same commodity as prepared roofing, except that they are cut into small sheets, usually 12½ inches long by 8 inches wide. They are shipped in crates instead of in rolls. The respondents contend that there is no reason for applying higher

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rates to the transportation of asphalt shingles than to prepared roofing in rolls, and they suggest that uniformity in the rates could be attained by raising the rates on building paper, roofing paper, prepared roofing, and composition roofing to the level of the rates on asphalt shingles. It is apparent, however, that uniformity could likewise be attained by reducing the rates on asphalt shingles to the basis of the rates on the other kinds of roofing, and the record shows that the latter method would be more logical and more reasonable than the former. In *Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.*, 28 I. C. C., 610, 612, it was said:

The case shows that asphalt shingles are the same article as prepared roofing in cylinders save that the shipment is in cartons instead of rolls. The value of the two articles is substantially the same; the purpose to which they are put is the same, although it may be true that owing to the different manner in which the roofing is applied the shingles come more into competition with wood and tile. The cartons will load, as a practical matter, much heavier than the shingles. No reason has been suggested why a higher rate should be imposed for the transportation of the shingles than of the cylinders, and we know of none. We are of the opinion that the defendants are practicing an undue discrimination by imposing a higher charge for the transportation of shingles than for the rolls, and that for the future the rate on shingles should not exceed that upon the rolls.

The respondents also express of record their apprehension lest the maintenance of the present rates on roofing papers, and a reduction in the rates on asphalt shingles, may lead to a similar reduction in the rates on wooden shingles. Their witness was unable, however, upon cross-examination, to testify as to the quantity of movement of wooden shingles in official classification territory, and the evidence of record would not warrant the conclusion that the rates on asphalt shingles should be kept on their present basis for the sake of maintaining the present rates on wooden shingles.

The respondents have not offered any evidence as to their earnings on these commodities. The exhibits filed by the protestants show that on 54 carload shipments of prepared roofing, roofing paper, building paper, and mixed carloads of roofing material from Chicago Heights, in the state of Illinois, the average haul was 209.5 miles, the average loading 40,079 pounds per car, the average revenue per car-mile 17.3 cents, and the average revenue per ton-mile 8.73 mills. For 266 carload shipments of the same commodities from Philadelphia, the average distance was 309.8 miles, the average weight 35,642 pounds per car, the average revenue per car-mile 15.3 cents, and the average revenue per ton-mile 8.42 mills. On 741 similar shipments from Erie, in the state of Pennsylvania, the average distance was 307 miles, average weight 37,213 pounds, average revenue per car-mile 15.8 cents, and the average revenue per ton-mile 9.47 mills.

Upon the evidence adduced in this behalf we conclude and find that the respondents have not established the propriety of the proposed increased rates on building and roofing papers.

WRAPPING PAPER AND PAPER BAGS.

The annual production of wrapping paper is approximately the same as that of printing paper. The value of ordinary wrapping paper varies from \$25 to \$145 per ton. The loading per car averages slightly less than 50,000 pounds.

The present rates on wrapping paper within central freight association territory are on the sixth-class basis, and no change is proposed in the intraterritorial rates. From central freight association territory to points in trunk line territory the rates on wrapping paper, like those on printing paper, news print paper, building and roofing paper, and on paper boards, are scaled on a base rate of 21 cents from Chicago to New York City. From New England the rates published by the standard lines are at present on the same basis as the rates on news print paper, 23.1 cents, and it is proposed to increase this base rate to 26.3 cents, sixth class. The present and proposed rates published by the differential lines are 1 cent less than those of the standard lines. The present New York-Chicago basis, 26.3 cents, is continued in the suspended tariffs.

In its value, the manner in which it is manufactured, and its average loading, wrapping paper is similar to printing paper, and it is apparent that the rates on both kinds of paper should be the same. As stated, the sixth-class basis already applies on wrapping paper within central freight association territory. From points in the Piedmont-Tyrone group the rates on wrapping paper are, and for some time have been, on the same basis as the rates on printing paper, as have also the rates from central freight association territory to eastern points.

Upon the record before us we conclude and find that the respondents have established the reasonableness of the proposed increased rates on wrapping paper. Considering all the circumstances we are further of the opinion that the same finding should be made as to the rates on paper bags.

Our attention is called to the fact that the Grand Trunk proposes a rate of 23.3 cents to Chicago from Berlin and Groveton, in the state of New Hampshire, and Mechanic Falls, in the state of Maine. This rate is 2 cents less than the differential sixth-class rate. No explanation of this departure from the sixth-class basis is given of record, and as the proposed rate is apparently discriminatory we are unable to give it our approval.

TAG BOARD.

Most of the proposed changes in the rates on tag board are reductions. Within central freight association territory, and from points in that territory to trunk line territory, this commodity at present moves on fifth-class rates. The New York-Chicago basis is sixth class. For several years tag board has moved from northern New York on rates which were probably on a lower basis than any other rates on this commodity in official classification territory, the present rate to Chicago being 18.9 cents. It is proposed to reduce the rates eastbound to sixth class, to continue the present New York-Chicago basis, and to increase the rates from northern New York to 23.3 cents, the same as the proposed rates on printing and wrapping paper. The different grades of tag board range in value from \$70 to \$170 per ton, and the average loading is approximately the same as that of printing paper and wrapping paper. From all the facts shown of record we conclude and find that the proposed rates on tag board are shown to be reasonable.

BLOTTING PAPER.

The present rates on blotting paper in central freight association territory are equivalent to the sixth-class rates, and that basis is continued in the suspended tariffs. From points in central freight association territory to points in trunk line territory the rates are on the 21-cent basis, Chicago to New York. The present New York-Chicago basis is 31.5 cents, fifth class. The respondents propose to reduce the rates westbound to sixth class, and to increase the eastbound rates to the same basis. There are only two mills in central freight association territory which produce blotting paper, one at Middletown, in the state of Ohio, and the other at Otsego, in the state of Michigan. It is said that only one mill in New England produces blotting paper. The value of blotting paper varies from \$50 to \$120 per ton; its loading per car from 40,000 to 50,000 pounds.

Upon the record we conclude and find that the proposed increased rates are shown to be reasonable.

OTHER KINDS OF PAPER.

It is also proposed to make certain increases in the rates on blank wall paper, cardboard, and blank register paper. Blank wall paper is similar to news print paper both as to value and as to the method of its manufacture. The present rate on blank wall paper from northern New York to Chicago is 18.9 cents, the same as the rate on news print paper. It is proposed to increase this rate to 23.3 cents. The reasonableness of the proposed rate has not been established, but the evidence shows that the rates on blank wall paper should be

no less than the rates on news print paper. We therefore find that the proposed rates are shown to be reasonable to the extent that they do not exceed the rates approved herein on news print paper.

The average value of cardboard is between \$70 and \$75 per ton, approximately the same as printing paper. Its average loading per car is 40,000 pounds. The present rates on cardboard from New England to Chicago, are the same as on printing paper, namely, sixth class when made entirely of wood pulp, and fifth class when made of other ingredients. The rates eastbound are also on the same basis as the rates on printing paper, the rate from Chicago to New York being 21 cents. It is proposed to increase the rates eastbound to the sixth-class basis, and to reduce to the same basis the rates on the higher grades of cardboard westbound. Upon the evidence adduced of record in this connection we find that the proposed increased rates on cardboard are shown to be reasonable. Blank register paper, which is used in cash registers and other computing machines, is worth approximately \$75 per ton. Its average loading is 40,000 pounds. The present basis westbound is fifth class, eastbound approximately 80 per cent of sixth class. The general application of sixth class is proposed for the interterritorial movement. Considering all the circumstances we are of the opinion that the propriety of the proposed rates on blank register paper has been established.

A number of changes in the description of commodities have been made in the suspended tariffs. It appears that all of them have been made for the purpose of making the descriptions more nearly uniform, and no objection to the changes has been made by protestants. Indeed, a number of the revisions have been made at the request of shippers. The proposed descriptions will therefore be permitted to become effective.

THE NEW ENGLAND COMPLAINT.

On April 1, 1914, the New England Paper & Pulp Traffic Association filed a formal complaint against the Boston & Maine Railroad and other carriers, alleging that the rates on paper, in carloads, from New England to points in central freight association territory are unreasonable and unjustly discriminatory as compared with the rates from points in the state of New York and in the Tyrone-Piedmont group, and as compared with the eastbound rates from points of production in the states of Michigan, Ohio, Wisconsin, and Minnesota. It is further alleged that the sixth-class rates from New England apply only on printing paper made of wood pulp, all other kinds of printing paper taking the fifth-class rates under the official classification, whereas commodity rates lower than sixth class, applying on all kinds and grades of printing paper, are published from

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nearly all of the other points of production in official classification territory. Manufacturers of paper in all other parts of the territory intervened.

That part of the complaint which deals with the restricted commodity descriptions published by the New England lines appears to have been completely satisfied by the offer of the respondents, made at the hearing, to withdraw the description:

Paper, printing, made entirely of wood pulp, including surface coated, in bundles, cases, crates, or rolls,

and to publish commodity rates, on the sixth-class basis, on all kinds of printing paper.

The allegation that the manufacturers in New England are unduly prejudiced by the maintenance of commodity rates lower than sixth class from other parts of official classification territory is also covered by the respondents' proposal to apply the sixth-class rates generally.

The complainant requests "permission, after judgment shall have been rendered on this complaint, to file and prove complaints for reparation of overcharges, based upon such rates as shall be determined." We are of opinion that the rates assailed are not shown to be unreasonable *per se* and that no reparation should be awarded in this proceeding. The fact that the sixth-class basis has been suggested by the respondents, and approved by the Commission, upon the record made in justification thereof, as the most logical solution of the many difficulties here presented, does not lead necessarily to the conclusion that rates in excess of sixth class are now, and have been, unreasonably high, nor does the evidence of record establish their unreasonableness. It would obviously be unfair, when adjustments of this character are made, to hold that the uniform basis finally chosen for the purpose of eliminating existing inequalities and inconsistencies should also be used by shippers as a basis for obtaining refunds of charges paid before the readjustment took place.

The representative of the New England Paper & Pulp Traffic Association called the attention of respondents at the hearing to certain alleged discrepancies in the rates on paper from New England and northern New York to Philadelphia, Baltimore, Washington, D. C., and Richmond. It appears that the rates to these points are made by adding certain arbitraries to other rates, and that the arbitraries are not the same on paper originating in northern New York as on paper originating in New England. The respondents stated that they were not prepared to defend this adjustment, and all of the interested parties expressed of record their desire that this matter be held in abeyance for the present, leaving the respondents free to file new tariffs correcting the alleged maladjustment, and the protestants to bring the situation further to our attention, if necessary, by formal

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complaint. No finding as to the propriety of these rates will therefore be made in this report; and the complaint will accordingly be dismissed.

THE WISCONSIN COMPLAINT.

In *Pulp & Paper Manufacturers Traffic Association v. Akron, Canton & Youngstown Railway Company* and others, the complainant, representing manufacturers of paper in Wisconsin, alleges that the rates on wood pulp and paper from Wisconsin to points in the states of Indiana, Michigan, Ohio, Kentucky, West Virginia, Pennsylvania, and New York are unreasonable and unjustly discriminatory. It is alleged that the mills of the complainant's competitors are located in the Tyrone-Piedmont group, at Johnsonburg, in the state of Pennsylvania, and at points in New York, New England, and Canada.

The Wisconsin mills are not located in official classification territory, and the evidence of record bearing upon the reasonableness or discriminatory character of the rates from Wisconsin is meager. Indeed, the representative of the Wisconsin mills stated that the formal complaint was filed rather for the purpose of having the whole rate structure presented to the Commission than because particular relief was desired.

In the suspended tariffs no increases are proposed from Wisconsin points to central freight association territory, but the respondents state that any increases in the rates from northern New York and New England to points in central freight association territory should properly be followed by corresponding increases in the rates from the Wisconsin mills. Neither the unreasonableness nor the discriminatory character of the rates from Wisconsin is established of record, and the complaint will accordingly be dismissed. As previously stated, the complaint of the Michigan producers that the rates from points in Wisconsin to points in central freight association territory and other points give an undue preference to the Wisconsin mills is pending in *Michigan Paper Mills Traffic Association v. Alabama & Vicksburg Railway Company* and others, which will be decided in a separate report.

In order to give effect to our findings herein, and to avoid confusion, it will be necessary for the respondents to cancel all the tariffs now under suspension on or before April 13, 1916, and an order will be entered accordingly. Tariffs conforming to our findings herein may be filed to become effective on five days' notice to the public and the Commission.

No. 6795.¹

MARTIN CANTINE COMPANY

v.

CINCINNATI, HAMILTON & DAYTON RAILWAY
COMPANY ET AL.

Submitted January 15, 1916. Decided February 15, 1916.

Upon complaint that the rates on surface-coated printing paper from Saugerties, in the state of New York, to points in official classification territory are unreasonable and unjustly discriminatory; *Held*, That the general application of sixth-class rates on printing paper as proposed by the respondents in *Official Classification Rates on Paper*, 38 I. C. C., 120, fairly meets the issues here presented. Reparation on past shipments denied for reasons stated in the Commission's report in that case.

R. D. Jenks and *A. S. Olmsted, 2d*, for complainant.

F. M. Ives and *C. H. Tiffany* for New England Paper & Pulp Traffic Association, intervener.

Parker McCollester for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In these cases the complainant attacks the rates on surface-coated printing paper from Saugerties, in the state of New York, to points in official classification territory, alleging that they are unreasonable and unjustly discriminatory. In one of the complaints reparation is asked. The principal basis of complaint is that the rates from Saugerties have been fifth class, while rates materially lower are published from other points at which complainant's competitors are located, particularly from Kalamazoo, in the state of Michigan, Hamilton, in the state of Ohio, Piedmont, in the state of West Virginia, and Cumberland Mills, in the state of Maine. Numerous paper companies have intervened.

In *Official Classification Rates on Paper*, 38 I. C. C., 120, decided contemporaneously herewith, the respondents proposed to readjust the rates on all kinds of printing paper within official classification territory on the sixth-class basis. With certain exceptions, we there approved the general application of sixth-class rates.

¹ The proceeding also embraces complaint in No. 8070, *Martin Cantine Company v. West Shore Railroad Company et al.*

The defendants in this proceeding express of record their willingness to establish rates on surface-coated printing paper from Saugerties to points in trunk line territory and New England equivalent to the sixth-class rates. This fairly meets the complaint here, and we find that they should include this change in their new tariffs to be filed as a result of our findings in that case. The rates from Saugerties to points in central freight association territory were reduced to sixth class in March, 1915, as a part of the general readjustment of rates on paper, and these rates are still in effect.

The complainant prays for reparation on past shipments. In markets to which the complainant's rates are higher than those paid by its competitors, particularly in the west, the complainant must shrink its prices to meet those made by its competitors, absorbing the difference in freight rates. In one of the formal cases decided in connection with our report in *Official Classification Rates on Paper, supra*, the New England Paper & Pulp Traffic Association asked for "reparation for overcharges, based upon such rates as shall be determined." This we denied for reasons therein stated. For like reasons we are of opinion and find that the complainant in these proceedings is not entitled to reparation.

An appropriate order will be entered.

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**FOURTH SECTION APPLICATIONS NOS. 461 ET SEQ.¹
THROUGH RATES TO POINTS IN LOUISIANA AND
TEXAS.**

Submitted December 9, 1915. Decided February 18, 1916.

Rates applying on through traffic from interstate points to points in Louisiana and Texas are in many instances in excess of the aggregates of the intermediate rates in contravention of the fourth section of the act to regulate commerce. *Held*, That sufficient justification has not been shown for continuing through rates that exceed the aggregates of the intermediate rates. Fourth section relief denied.

H. G. Herbel and *F. G. Wright* for applicants.

F. H. Wood for Morgan's Louisiana & Texas Railroad & Steamship Company and other carriers.

F. W. Gwathmey for Vicksburg, Shreveport & Pacific Railway Company.

J. R. Christian for Houston & Shreveport Railroad Company and Houston East & West Texas Railway Company.

J. B. Payne for Texas & Pacific Railway Company.

C. S. Burg for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

B. S. Atkinson for Louisiana & Arkansas Railway Company.

G. T. Atkins, jr., and *E. P. Gaines* for protestants.

REPORT OF THE COMMISSION.

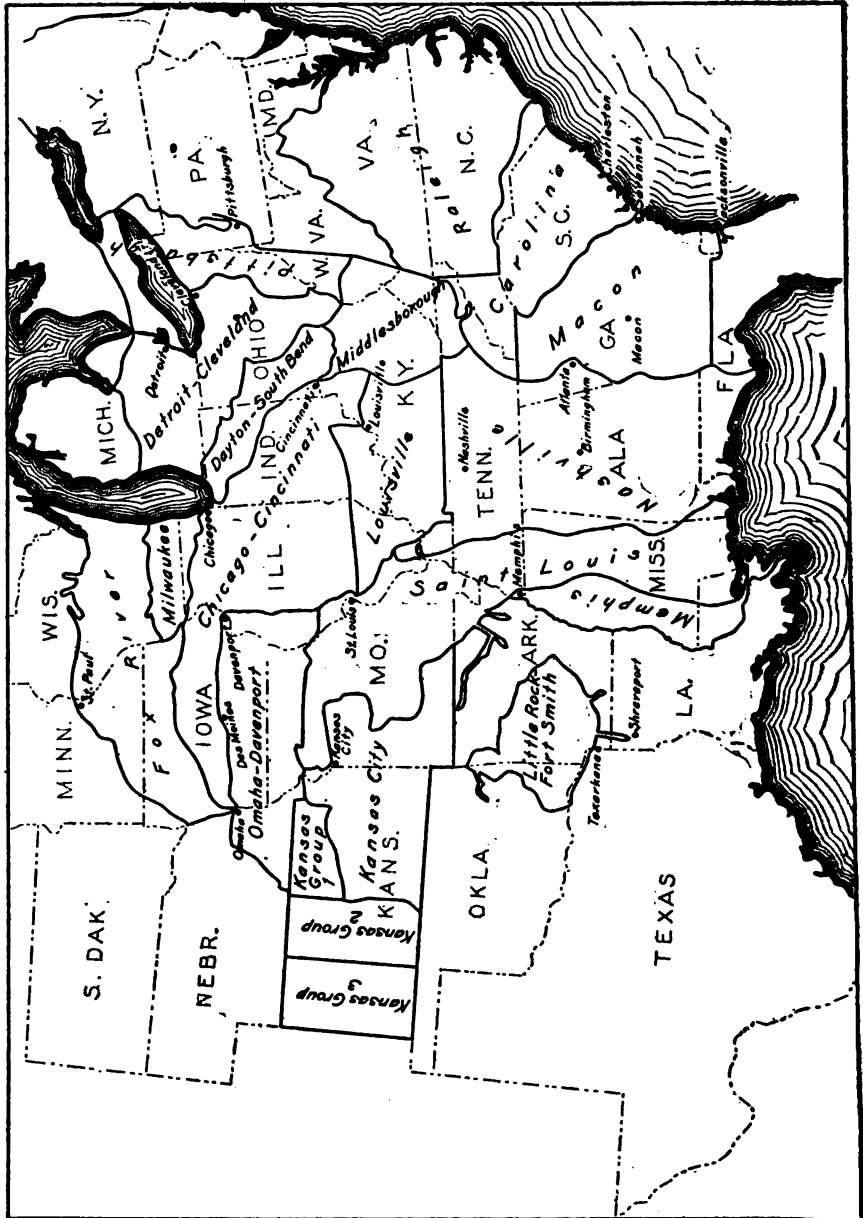
BY THE COMMISSION:

The joint through rates from interstate points to points in Louisiana and Texas are in many cases higher than the aggregates of the intermediate rates in contravention of the fourth section. Appropriate applications were filed by the interested carriers for authority to continue this adjustment of rates. These have been heard and submitted and are now before us for determination.

These applications ask for authority to continue through rates from all points in the United States to points in Louisiana and Texas that exceed the aggregates of the intermediate rates, but the only justification offered by the applicants for rates of this character was in respect to the rates from the so-called defined territories. The

¹ The proceeding also embraces Fourth Section Applications Nos. 689, 1950, 4218, 4219, 4220, and 4948.

boundaries of these territories are roughly depicted on the attached map. It will be seen that they embrace practically all of that por-



tion of the United States east of the Missouri and Mississippi rivers, west and south of western trunk line territory, including also the state of Kansas and portions of Arkansas and Nebraska.

The basis of the rates from these territories to Louisiana and Texas points involved herein is the scale of rates from St. Louis. The rates from each of the groups are constructed by adding or deducting certain fixed differentials to or from the St. Louis rates. The differentials used in constructing rates to points in Texas common-point territory are shown in the following table. With a few exceptions the same differentials are used in constructing rates to certain points in Louisiana.

Differentials from defined territories applicable on Texas traffic to be added to or deducted from rate in effect from St. Louis, in cents per 100 pounds.

From—	Basls.	1	2	3	4	5	A	B	C	D	E
Memphis.....	Deduct	12.0	12.0	2.0	7.0	5.0	7.0	5.0	5.0	5.0	5.0
Nashville.....	Add	5.0	5.0	4.0	3.0	2.0	3.0	2.0	2.0	2.0	1.0
Louisville (south of Ohio River)	Add	11.0	9.0	6.0	5.0	3.0	4.0	3.0	3.0	3.0	2.0
Louisville (on and north of Ohio River)	Add	12.8	10.6	7.2	5.8	3.7	4.7	3.5	3.5	3.5	2.5
Macon.....	Add	11.0	9.0	6.0	5.0	3.0	4.0	3.0	3.0	3.0	2.0
Carrolla.....	Add	22.0	22.0	17.0	13.0	10.0	11.0	10.0	9.0	9.0	9.0
Omaha-Davenport	Add	15.0	12.0	9.0	7.0	4.0	5.0	4.0	4.0	4.0	3.0
Chicago.....	Add	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Cincinnati (south of Ohio River)	Add	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Cincinnati (on and north of Ohio River)	Add	21.9	17.6	13.2	10.8	7.7	9.7	8.5	7.5	6.5	5.5
Milwaukee.....	Add	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Fox River.....	Add	40.0	31.0	24.0	20.0	15.0	16.5	14.0	12.0	11.0	10.0
Dayton-South Bend	Add	34.2	26.8	21.4	17.0	11.8	11.8	10.8	10.8	10.8	10.8
Middlesborough	Add	40.0	35.0	27.0	19.0	16.0	16.0	14.0	12.0	12.0	11.0
Detroit-Cleveland	Add	42.5	37.2	28.6	20.2	16.9	16.9	14.8	12.8	12.8	11.8
Pittsburgh.....	Add	52.7	47.4	33.8	24.3	20.1	21.1	18.6	16.9	16.9	15.9
Raleigh.....	Add	46.0	36.0	27.0	21.0	16.0	18.0	16.0	15.0	15.0	14.0

The differentials between St. Louis and lower Mississippi River crossings, viz, Vicksburg, Natchez, Baton Rouge, and New Orleans, are as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	10	10	10	9	6	7	6	6	6	6

In many cases the through rates so constructed exceed the aggregates of the intermediate rates. As presented by the applicants these were divided into three classes, as follows:

1. Certain through rates from St. Louis, Mo., and defined territories to points in Louisiana and Texas exceed the aggregates of the intermediate rates to and from the lower Mississippi River crossings, viz, Vicksburg, Natchez, Baton Rouge, and New Orleans, and certain interior points east of the Mississippi River, such as Meridian and Jackson, Miss.

2. Certain through rates from Memphis and Memphis territory to Galveston and Houston, Tex., and points taking the same rates exceed the aggregates of the intermediate rates to and from New Orleans and other lower Mississippi River crossings.

3. Certain through rates from St. Louis and defined territories to Texas common points exceed the aggregates of intermediate rates to and from Shreveport, La., and other points west of the Mississippi River.

There is practically no difference between classes 1 and 2, as they both include through rates that exceed the combinations on lower Mississippi River crossings. We have therefore divided the departures into two classes only, viz: (1) Instances where through rates exceed the aggregates of intermediate rates to and from lower Mississippi River crossings, viz, Vicksburg, Natchez, Baton Rouge, and New Orleans, and certain interior eastern points east of the Mississippi River, such as Meridian and Jackson, Miss.; and (2) instances where through rates exceed the aggregates of intermediate rates to and from Shreveport and other points west of the Mississippi River. Typical examples of the first class are as follows:

Through rates.	1	2	3	4	5	6	A	B	C	D	E
Memphis to Shreveport, La.....	117.0	101.0	88.0	75.0	60.0	.....	62.0	50.0	42.0	36.0	29.0
Memphis to Vicksburg, New Orleans, etc.....	45.0	40.0	32.0	25.0	20.0	17.0	12.0	18.0	14.0	12.0	15.0
New Orleans, etc., to Shreveport, La.....	60.0	50.0	40.0	30.0	22.0	.....	25.0	20.0	17.0	16.0	15.0
Combinations of intermediate rates.....	105.0	90.0	72.0	55.0	42.0	.....	37.0	38.0	31.0	28.0	30.0
Amount through rates exceed combination rates.....	12.0	11.0	16.0	20.0	18.0	.....	25.0	12.0	11.0	8.0	.....
Pittsburgh to Shreveport.....	179.7	158.4	129.8	106.2	85.1	.....	90.1	71.9	63.9	57.9	49.9
Pittsburgh to New Orleans, etc.....	116.0	95.0	79.0	61.0	49.0	43.0	33.0	46.0	33.0	28.0	35.0
New Orleans, etc., to Shreveport.....	60.0	50.0	40.0	30.0	22.0	.....	25.0	20.0	17.0	16.0	15.0
Combinations of intermediate rates.....	176.0	145.0	119.0	91.0	71.0	.....	58.0	66.0	50.0	44.0	50.0
Amount through rates exceed combination rates.....	3.7	13.4	10.8	15.2	14.1	.....	32.1	5.9	13.9	13.9	.....
Detroit to Shreveport.....	169.5	148.2	124.6	102.2	81.9	.....	85.9	69.8	59.8	53.8	45.8
Detroit to Vicksburg and New Orleans, etc.....	116.0	95.0	79.0	61.0	49.0	43.0	33.0	46.0	33.0	28.0	35.0
New Orleans, etc., to Shreveport.....	60.0	50.0	40.0	30.0	22.0	.....	25.0	20.0	17.0	16.0	15.0
Combinations of intermediate rates.....	176.0	145.0	119.0	91.0	71.0	.....	58.0	66.0	50.0	44.0	50.0
Amount through rates exceed combination rates.....	.....	3.2	5.6	11.2	10.9	.....	37.9	3.8	9.8	9.8	.....

Typical examples of the second class are as follows:

Through rates.	1	2	3	4	5	A	B	C	D	E
Vicksburg and New Orleans to Daingerfield, Tex.....	137	115	94	87	69	72	64	52	40	33
Vicksburg and New Orleans to Shreveport.....	60	50	40	30	22	25	20	17	16	15
Shreveport to Daingerfield.....	37	34	32	30	23	24	21	18	14	11
Combinations of intermediate rates.....	97	84	72	60	45	49	41	35	30	26
Amount through rates exceed combination rates.....	40	31	23	27	24	23	23	17	10	7
Vicksburg and New Orleans to Pittsburg, Tex.....	137	115	94	87	69	72	64	52	40	33
Vicksburg and New Orleans to Shreveport.....	60	50	40	30	22	25	20	17	16	15
Shreveport to Pittsburg.....	43	40	37	34	26	27	24	21	16	13
Combinations of intermediate rates.....	103	90	77	64	48	52	44	38	32	28
Amount through rates exceed combination rates.....	34	25	17	23	21	20	20	14	8	5

The through rates involved herein are governed by the western classification as are also the rates from the lower Mississippi River crossings, but the rates to the said crossings from the east of the Mississippi River are governed by the southern classification. The application of different classifications east and west of the Mississippi River is the cause of many fourth section departures of the first class, as will be shown hereafter.

The principal points in Texas involved in this proceeding are those in the eastern portion of the Texas common-point group. The boundaries and unusual character of this group have been described and discussed in previous reports of the Commission. *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427; *Texas Common Point Case*, 26 I. C. C., 528. It is therefore unnecessary here to enter upon a further description of it. It will be sufficient for the purpose of this report to state that it embraces practically the entire eastern half of the state of Texas and covers an area approximately 500 miles in extent from north to south and 450 miles from east to west. In general the rates from any given point in the defined territories to all points in this group are the same. There are two important exceptions to this rule. In the northern part of the group is a small section commonly known as the "burnt district" to which the rates from Kansas City and intervening territory are lower than to other points in the group. The rates to Houston and Galveston from New Orleans and other lower Mississippi River crossings also are lower than rates to other points in the group.

Many of the principal departures of the second class are those which occur in through rates from lower Mississippi River crossings to points in the Texas common-point group which exceed the aggregates of the intermediate rates to and from Texarkana and Shreveport and other points situated immediately east of the eastern boundary of that group. Shreveport is representative of these points, and wherever it is referred to hereafter it should be understood that we have reference to all points similarly situated. As we have shown above, the rates to all points in the Texas common-point group are generally the same. To the majority of the points in this group these blanket rates do not exceed the aggregates of the intermediates. It is only to a strip of territory on the eastern edge of the group that the through rates are higher than the combinations on Shreveport. As the distance from Shreveport increases the excesses diminish until at points from 130 to 180 miles west they disappear entirely and the through rates become less than the Shreveport combinations. The through rates from Memphis to various points of destination in Texas and Louisiana and from other points in defined territories to Shreveport and Lafayette, La., which exceed the aggregates of the intermediate rates were the object of attack in *Memphis Freight*

Bureau v. St. L., I. M. & S. Ry. Co., I. C. C. Docket No. 6390; *Shreveport Chamber of Commerce v. A. & V. Ry. Co.*, Docket No. 7250; and *Lafayette Chamber of Commerce v. L. W. R. R. Co.*, Docket No. 7584, separately considered.

In justification of their applications for authority to continue rates to points in Louisiana and Texas which exceed the aggregates of the intermediate rates, petitioners urge (1) the impossibility of assimilating the different classifications governing the intermediate rates to and from the Mississippi River; (2) that the revision of the through rates so that they will not exceed the aggregates of the intermediate rates will destroy their present scheme of making rates on a differential basis from the defined territories; (3) that the through rates which they have in effect at the present time are reasonable rates, even though they do exceed the aggregates of the intermediate rates; and (4) that the intermediate rates, which in the aggregate are less than the through rates, are depressed rates compelled by water competition and other conditions beyond the carriers' control.

CLASSIFICATION DIFFERENCES.

The ratings, minimum weights, descriptions of articles, packing requirements, and other conditions incident to the transportation of merchandise and which affect the freight charges applying thereon in the western classification are frequently different from those in the southern. It is claimed, therefore, that it is impossible to construct through rates by combination on points at the boundaries of the two classification territories that will not in some instances exceed the aggregates of the intermediate rates. For example, the through class rates may not exceed the aggregates of corresponding class rates to and from intermediate points, but an article classified in one class in the western classification may be classified in a lower class in the southern classification; and the lower class rate to the basing point plus a higher class rate thence to destination will be less than the through class rate. Thus, the through first-class rate governed by the western classification from Detroit, Mich., to Shreveport, La., \$1.695 per 100 pounds, is less than the aggregate of the first-class rates to and from Vicksburg, but is more than the second-class rate from Detroit to Vicksburg, 95 cents, governed by the southern classification plus the first-class rate under the western classification Vicksburg to Shreveport, 60 cents. Therefore, an article rated first class in the western classification and second class in the southern classification would be charged a higher through rate from Detroit to Shreveport than the combination on Vicksburg. The situation is further complicated by the fact that the number of ratings is not the same in the two classifications. In the western

classification there are 10 classes, as follows: 1, 2, 3, 4, 5, A, B, C, D, and E. In the southern classification there are 13 classes, as follows: 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F. Generally speaking, the ratings in the southern classification are lower than those in the western.

When through rates are published from points in one classification territory to points in a territory in which a different classification applies they must be made subject to one or the other of such classifications. It will be seen from the above that where such through rates are approximately equal to the sums of the intermediate rates of corresponding classes the charges computed at the through rate subject to the higher classification will exceed in some instances the aggregates of the charges to and from points at the boundaries of the classification territories computed at rates subject to one classification up to the boundary line and to a different one beyond. This can be avoided only by reducing the through rates or increasing the intermediate rates, or by both processes, so that the former will in no instance produce a greater total charge on a through shipment than the aggregate of the charges obtained by the use of rates to and from an intermediate point; or by publishing commodity rates to apply on various articles on which the charges on the basis of the through rate would not exceed the aggregate of the charges based on the intermediate rates. It was estimated by one of the witnesses for the applicant carriers that there are 15,000 possible combinations of intermediate rates that will make less than the through rates. It is claimed, therefore, that the adoption of the latter plan would necessitate the publication of thousands of new commodity rates. It is clear that if the present through rates are to be continued one of the above courses must be adopted, or some measure of relief granted by the Commission. If relief is denied and neither course adopted, deviations from the rule of the fourth section can be avoided only by cancellation of the through rates. Of course, the whole matter could be adjusted by a unification of the two classifications, and the carriers have been and are now working to accomplish this result, but it will be some time before such a unification can be effected.

The above are practical difficulties in the publication of rates which are fully appreciated; but are the circumstances in this situation so unusual or of such a nature as to make this a special case such as would warrant the Commission in permitting the continuance of the present practice of charging greater compensation on through shipments than the aggregates of the charges computed at the intermediate rates? This condition is not one peculiar to this particular territory, but is found wherever rates are made from one classification territory to a territory governed by another, and it is different from other cases where rates are in contravention of the aggregate

of the intermediates provision of the fourth section only because it occurs in through rates from one classification territory to another. It should be noted also that the difficulties suggested apply only to the class-rate adjustment. They do not prevent the correction of commodity rates that exceed the aggregates of intermediate rates. We are not convinced that the difficulties in the way of adjusting this situation in such a manner as to avoid departures from the fourth section are sufficient to justify us in holding that through rates may properly be continued which result in charges that exceed the aggregates of charges on the basis of the rates to and from intermediate points. We must decline, therefore, to sanction a continuance of this practice.

The publication of a multitude of commodity rates in order to avoid the maintenance of class rates which exceed the aggregates of the intermediate rates is not desirable. The difficulties of avoiding possible or occasional instances in which a joint through rate becomes higher than the aggregate of intermediate rates due to change in some factor of the intermediate rates without immediate knowledge thereof on part of the publisher of the joint through rates, are appreciated. The existing rates should be purged of the instances in which the through rates exceed the aggregate of the intermediate rates, and when that has been done, if it shall be felt that some provision should be made against possible instances such as are above referred to, the Commission will be willing to consider applications in special instances for specific authority to include in a tariff a rule providing in substance that upon reasonable application therefor, and upon one day's notice to the Commission and to the public, any through rate contained in the tariff which exceeds the aggregate of the intermediate rates subject to the act will be revised to the basis of the aggregate of the intermediate rates.

**THE DIFFERENTIAL ADJUSTMENT OF RATES FROM DEFINED TERRITORIES
TO POINTS IN LOUISIANA AND TEXAS.**

The relations between the various defined territories created by the establishment of rates to Texas and Louisiana on the basis of differentials over or under the rates from St. Louis, as described above, have been in effect for upward of 30 years.

The differentials used in constructing rates from central freight association territory were said to have been arrived at by adding the actual or approximate averages of the local rates from each of the said territories to the Ohio and Mississippi river crossings. The through rates obtained by adding these differentials to the rates from St. Louis were made applicable via all routes. The basis for the differentials from other defined territories does not appear of record.

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It is stated that the reason for the adoption of this basis for the construction of through rates from the defined territories to points in the southwest was because it afforded a method for the establishment of reasonable relative rates that would permit points of production and distribution in the several defined territories to compete in the southwestern markets on an equitable basis. It also afforded a means for equalizing the rates via the various routes and gateways to that territory. It is asserted that the success that has attended the operation of this adjustment of rates has fully justified its establishment and that the relation of rates between the several territories has given general satisfaction. The applicants contend that to require that the through rates be adjusted so that they will not exceed the aggregates of the intermediate rates would materially change the relation of rates between the several defined territories and practically disrupt the entire rate structure. This is illustrated by the following table showing the present differentials between the rates on the first five classes from St. Louis, Atlanta, and Memphis to Shreveport, La., in comparison with the differences that would exist in rates from the said points if the rates from Memphis were constructed on the basis of the combinations over Vicksburg or New Orleans:

	1	2	3	4	5
Present differentials Memphis under St. Louis and Atlanta.....	10	10	8	7	5
If the rates Memphis to Shreveport were reduced to the Vicksburg combination they would be the following differentials under St. Louis and Atlanta.....	23	21	24	25	28

Rates from Pittsburgh territory to Shreveport are the following differentials over St. Louis:

Class	1	2	3	4	5
Rate	52.7	47.4	33.8	24.2	20.1

If the rates from Pittsburgh were reduced to the combination basis the differentials over St. Louis would be:

Class	1	2	3	4	5
Rate	49	34	23	11	9

Reduction of the through rates to equal the aggregates of the intermediate rates would also disrupt the Texas common-point group, as it would take out of that group these points in the eastern part of the group to which the combinations on Shreveport and other intermediate points are less than the blanket rates that now apply to the whole group. As an alternative, where any of the through rates are reduced to equal the combination of intermediate rates corresponding reductions could be made from other defined territories and the present relationship preserved. However, it is claimed that this would result in serious losses of revenue, with probably disastrous re-

sults to the southwestern lines that would be most affected, several of the more important of which are now in the hands of receivers.

REASONABLENESS OF THE PRESENT THROUGH RATES.

It is urged by the petitioners that the present through rates from defined territories to points in Louisiana and Texas are just and reasonable rates even though they may exceed the aggregates of the intermediate rates to and from intermediate points, and numerous exhibits were introduced in which these rates are compared with rates for like distances in the same and adjacent territories, many of which have been established by orders of this Commission. The applicants contend, therefore, that the through rates being reasonable they should not be required to change them. Aside from the question of the intrinsic reasonableness of these through rates, however, upon which we express no opinion, we can not agree with this contention of the applicants. We have frequently held that rates may be reasonable *per se* and yet unlawful because of their unduly discriminatory character. *Board of Trade of Lynchburg v. Old Dominion S. S. Co.*, 6 I. C. C., 632; *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, 24 I. C. C., 220; *Transcontinental Commodity Rates*, 32 I. C. C., 449. The imposition of through rates on traffic from defined territories to points in Louisiana and Texas involved in this proceeding which are higher than the aggregates of rates charged on like shipments to and from intermediate points is a discrimination against through traffic expressly prohibited by the act. In our opinion this is not justified by the plea that the through rates are reasonable *per se*, and we can not sanction the continuance of such rates.

THE INTERMEDIATE RATES.

In the majority of instances where through rates exceed the aggregates of the intermediate rates the latter rates apply to and from points on the Mississippi River. These rates, it is alleged, are compelled by water competition or were established primarily as the result of competition of this character. The rates from New Orleans to Shreveport, La., afford the best illustration of rates of the latter description. It was testified that rail communication between Shreveport and New Orleans was first established in 1881, and that the schedule of rates adopted by the rail lines was that in effect via the water lines operating between New Orleans and Shreveport at that time. Subsequently, by act of the legislature of Louisiana at the time of the creation of the railroad commission of that state, carriers were prohibited from making any changes in rates except with the permission of that body. The result is that the class rates and most of the commodity rates between New Orleans and Shreve-

port are practically the same to-day as they were at the time of the completion of the first through all-rail route between these points.

There is now pending before the Railroad Commission of Louisiana an application for permission to increase these rates, but these increases, if granted, would not entirely correct the situation, as the through rates would still exceed the aggregates of the intermediate rates to and from New Orleans and other lower Mississippi River crossings. It is alleged by the carriers that these intermediate rates are low rates which they are compelled to maintain because of conditions beyond their control and that they should not be required to use them in constructing through rates.

It was testified that there are 4,974 miles of navigable water in the state of Louisiana, and 1,950 miles of railroad. It was also testified that there is an intercoastal canal now in the course of construction through the southern portion of Louisiana which will provide a through water route between Houston and New Orleans and add materially to the present mileage of navigable waterways in that state. These conditions, it is asserted, have been influential in reducing rates to other points in Louisiana below a reasonable standard.

The contention of the applicants that they should be permitted to continue through rates that exceed the aggregates of the intermediate rates where the latter rates have been reduced to meet water competitive conditions has been urged before in other cases where this condition obtained, but has been held not to justify the continuance of such through rates. *Spartanburg Chamber of Commerce v. S. Ry. Co.*, 34 I. C. C., 484; *Through Rates from Buffalo-Pittsburgh Territory*, 36 I. C. C., 325. There is nothing of record in this case that would warrant a different conclusion. We therefore adhere to our previously expressed views on this subject.

It was stated by petitioners that some of the through rates from defined territories to points in Louisiana and Texas are higher than the rates to intermediate points in those states plus the rates from such points to ultimate destinations in the same state. Many of the latter rates are on file with this Commission without any restriction against their use on interstate traffic. When used on such traffic they apply for transportation between points in the same state, and it is stated that they were filed with the Commission for application on through shipments where no specific through rates are published. It is the contention of the carriers, therefore, that they are subject to the act to regulate interstate commerce only in their application as proportions or remainders of through rates, and not as intermediate rates. They maintain that the prohibitive clause of the fourth section against charging greater compensation as a through route than the aggregate of the intermediate rates subject to the act has refer-

ence only to such intermediate rates as are subject to the act in their application to local shipments to and from intermediate points.

With this contention we can not agree. In *Class Rates between Stations in Louisiana*, 33 I. C. C., 302, we said:

In case it were shown that a through tariff carried on specified articles from St. Louis to La Fayette rates in excess of the sum of rates carried by tariffs from St. Louis to Baton Rouge and proportional rates applicable from Baton Rouge to La Fayette, a violation of the fourth section would be shown.

These rates now apply on through traffic to destinations in Louisiana and Texas where specific through rates are not published and would be applicable on traffic from the defined territories were the present through rates canceled. They apply for a portion of the haul which is included within the through haul from points outside the states of Louisiana and Texas to points within those states. Their function is essentially, therefore, that of intermediate rates and they clearly fall within the meaning of that term as used in the amended fourth section. In *Windsor Turned Goods Co. v. C. & O. Ry. Co.*, 18 I. C. C., 162, we announced the principle that the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route will be held to be the lowest combination that would lawfully apply if the joint through rate were canceled, and to this view we adhere. The applicants introduced no evidence in defense of the through rates which exceed the aggregates of rates of this character beyond that offered generally in support of their applications for authority to continue other through rates to points in Louisiana and Texas that are higher than the sums of the intermediate rates to which reference has been made above.

Upon the whole record we are of opinion that sufficient justification has not been shown by the applicants in this case for continuing through rates between the territories involved that exceed the aggregates of the intermediate rates, and authority to continue such rates will be denied.

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No. 7601.
ANDREWS BROTHERS COMPANY ET AL.
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 29, 1915. Decided February 19, 1916.

Upon showing that the Pennsylvania Railroad Company grants to but one concern the right to auction off consignments of fruit in the carrier's produce yards at Pittsburgh; *Held*, That this practice *per se* does not accord undue or unreasonable preference or advantage, but should hereafter be policed by requiring the concessionaire to publish the rules governing said auction. Complaint dismissed.

J. G. Marks for complainants.

Patterson, Crawford & Miller and *Henry Wolf Bicklé* for defendants.

R. T. M. McCready and *C. R. Pilkington* for Union Fruit Auction Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

In 1899 the Pennsylvania Railroad opened its produce yards in Pittsburgh, which have been enlarged until at present they will accommodate 520 cars. It was thought that an auction conducted in this yard for the sale of fruit received would stimulate shipments over its lines by furnishing a quick market, and the Pennsylvania Railroad invited a company which had been conducting a fruit auction elsewhere in Pittsburgh to conduct a like auction in the freight station of the produce yard, where a room was fitted up for this purpose at the expense of the carrier.

Since that time fruit auctions have been conducted at the produce yards by either a partnership or a corporation in which one James M. Fanning has been the moving factor. What was an experiment has grown into an institution, which by common consent is of great service alike to the shippers, the receivers, and the purchasers of fruit, as well as to the carrier, whose traffic has been greatly augmented. The advantage of an auction arrangement is universally conceded, the record showing that consignors of fruit not infrequently stipulate that their consignments be disposed of by this agency, as the publicity is a guaranty that the proceeds of the sale must be properly accounted for.

The complaint in this case, brought by certain receivers of fruit in Pittsburgh, alleges that the Pennsylvania Railroad Company
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unduly discriminates against the complainants by granting the auction privilege to the Union Fruit Auction Company exclusively, and illegally prefers certain receivers of fruit, such as James M. Fanning, who are interested in the auction company, and who in the capacity of dealers are in competition with the complainants.

The Union Fruit Auction Company conducts sales regularly on what are known as market days, although in certain seasons of the year auctions are of practically daily occurrence, as will be seen from the fact that last year there were 298 auctions held. Cars of citrus and deciduous fruit upon arrival at the produce yards are turned over to the auction company by the receivers of fruit; from these cars the company takes sample boxes, and these are displayed for inspection upon the floor of the freight house. Of the fruit to be sold a catalogue is made, which is printed and distributed to the buyers usually about an hour before the sale. Cars are sold either entire or in part to the highest bidder. Settlement is made either immediately or within a week. The number of bidders ranges from 15 to 200. There are no printed rules or rates of commission. Commissions commonly paid to the auction company for its services in effecting sales vary according to the different kinds of fruit sold from $2\frac{1}{2}$ per cent to 3 per cent, though lower commissions are charged those receivers who undertake to sell all their fruit through the auction, or who habitually employ it, than to those who but occasionally avail themselves of its services.

Fanning, who as well as being a large stockholder, officer, and active agent of the auction company, is also a fruit receiver and dealer, buys at the auction which his company conducts. The complainants maintain that he, as well as others interested in the auction company, are in active competition with complainants in the sale and purchase of fruit; that by means of his connection with the auction company, he has his fruit frequently placed first on the sales catalogue; that he is invariably recognized first by the auctioneer; that where he and one of the complainants bid the same price, the goods are knocked down to him; that he has on occasion refused to sell at auction the fruits of complainants; and that complainants are frequently charged commissions higher than are demanded of those dealers interested in the auction company. Therein, over the complainants, lies the undue preference alleged.

All of these charges Fanning and his associates in the auction company deny. It is admitted by the complainants that the alleged abuses ceased after the bringing of this complaint and that the auction is now fairly conducted.

The matter first to be considered is the legality of the carrier's employing one company only as its auction agency. The fact that

the present auction company pays nothing for the right to sell and for exhibition space is immaterial; the carrier gets its consideration by the expedited release of equipment and the admittedly increased traffic due to the auction.

That a carrier may contract with one agency to the exclusion of others for the performance of a function which is not transportation is established, and such arrangement does not, of itself, suffice to establish a charge of undue or unreasonable preference or advantage. In *Southwestern Produce Distributors v. Wabash R. R. Co.*, 20 I. C. C., 458, where an auction company demanded the same facilities for conducting its business as an auctioneer of fruits and vegetables at the St. Louis terminals of the defendant as were accorded exclusively to another auction company, it was held that the complaint was without merit, the evidence showing that the latter company offered its services to all shippers at a uniform rate and without preference or discrimination.

Nor does the mere fact that certain stockholders in the Union Fruit Auction Company are receivers of fruit necessarily constitute undue discrimination against receivers of fruit not interested in the auction.

In *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.*, 17 I. C. C., 98, at page 104, it was said:

It has been decided, for example, that the act does not prevent a railroad from leasing all its refrigerator cars from one company, though the latter be a large shipper as well as the lessor of such cars, *Consolidated Forwarding Co. v. S. P. Co.*, 9 I. C. C., 182; nor require the hauling of a particular make of private car, *Worcester Car Co. v. Pa. R. R. Co.*, 3 I. C. C., 577; nor prohibit an exclusive contract with a particular stockyards company, *Kentucky Railroad Commission v. L. & N. R. R. Co.*, 10 I. C. C., 173; *Central Stockyards Co. v. L. & N. R. R. Co.*, 192 U. S., 568; *L. & N. R. R. Co. v. Central Stock Yards Co.*, 212 U. S., 132. * * * Of course, if the arrangement made in any case results in undue preference or prejudice to shippers, the Commission has jurisdiction to correct the wrongdoing. *Mustogee Commercial Club v. M., K. & T. Ry. Co.*, 12 I. C. C., 312.

And again, at page 105:

We are not prepared to accept this view or to hold that a violation of the act is established by merely showing that the owners of a majority of the stock of a corporation which performs a certain service for a railroad at a compensation involving no more than a reasonable profit, are also shippers of freight.

The issue to be determined, therefore, narrows down to the query whether or not Fanning and his associates in the Union Fruit Auction Company obtain by reason of their intimate association with or their conduct of the auction any undue or unreasonable preference or advantage. Complainants allege, and not without force, that the possibility and the inducement to practice undue or unjust preference or advantage inheres in the arrangement. Fanning is a large

buyer at the auction and the active factor in control of the auction company; and this situation seems to require the utmost circumspection on the part of the defendant to prevent prejudice to other dealers at the auction.

It should also be remembered that the auction company's profits come from commissions and that unfair advantage taken of competitors by reducing sales might easily lessen the profits from auction.

The complainants' major purpose in bringing this action was to obtain from the carrier the right to conduct an auction in the freight station like that granted to the Union Fruit Auction Company. All parties testified that an auction at the terminal was a desirable thing; shippers who had no connection with either the auction company or the complainants gave evidence that the proceedings of the auction company have always been fair and satisfactory, and even the complainants admit that the alleged abuses have ceased.

Obviously the defendant carrier would be less open to criticism were it to employ as auctioneers an agency which had no interest in the commodities sold. On the other hand, an experienced dealer in fruit is presumably a more efficient person to conduct an auction than one without such experience. The public appears, however, to have been fairly well served by the existing arrangement, barring certain occurrences, some of which seem to be capable of reasonable explanation, and we do not think it necessary to disturb the present situation further than to direct that the defendant carrier shall require that the rules and rates of commission governing auction sales be published by the auction company, posted in the auction room, and adhered to.

We are of opinion and find that the undue discrimination and preference alleged have not been proven. An order will be entered dismissing the complaint.

HALL, *Commissioner*, concurring:

It does not appear that the auction company is an agency in any sense of the carrier, or that the service it affords is one of transportation, or that it is a shipper or consignee, or that it occupies space at the produce yard needed for any transportation purpose. I question the jurisdiction of the Commission in the matter and concur in the finding that the complaint be dismissed.

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No. 52 (Ex Parte).

IN THE MATTER OF FILING WITH THE INTERSTATE
COMMERCE COMMISSION DIVISIONS OF JOINT
RATES APPLICABLE TO RAILWAY FUEL COAL.

February 14, 1916.

1. Carriers using fuel other than coal required to file their divisions of joint rates on such fuel in the transportation of which they participate and are required, when changes are made in such divisions, to file a statement of facts relied upon as justification for such changes. A supplemental general order will issue under the provisions of section 6.
2. Inquiries concerning certain features of the order in this proceeding, with respect to which carriers are in doubt, answered.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

Since the issuance of the original report and order in this case, 37 I. C. C., 265, the Commission's attention has been directed to the fact that certain carriers are burning oil to a large extent, if not entirely, in their locomotives. The original order referred only to railway fuel coal and did not in terms require the filing of divisions on fuel oil. Since the principles relating to fuel coal apply equally to other kinds of fuel, carriers using such other fuel will also be required to file their respective divisions with the Commission.

Recently various inquiries have been addressed to the Commission concerning certain features of the order in this proceeding with respect to which carriers are in doubt. These inquiries are discussed below.

It has been suggested that the requirement that each and every carrier party to a joint rate should file division sheets or statements would result in needless duplication of work, and that either the originating or delivering carrier should be allowed to file for all carriers participating in the movement. In order to relieve carriers in this respect the Commission will consider it a compliance with its order if initial carriers file division sheets or statements, provided such division sheets or statements show the divisions or proportions of all joint rates accruing to each carrier in the route, and each of the carriers other than the one filing the same shall file with the Commission evidence of its assent thereto or acceptance thereof by signing a statement bearing specific reference to the division sheets or

statements so filed by the initial carrier or by indicating its approval thereon.

Doubt has been expressed as to whether or not the order requires the filing of divisions on coal used at stations for heating and other purposes, in shops, etc. The order requires the filing of division sheets or statements covering all shipments of company fuel irrespective of the purpose for which the fuel is used.

The fact that the division accruing to a carrier on a shipment of company fuel is the same as the division accruing on a commercial shipment between the same points can not be construed as relieving the carrier from compliance with the order.

It has been urged by several carriers that unless the division sheets or statements filed in compliance with the order are confined to the use of the Commission and not subject to public inspection controversies between railroads for a readjustment of long established bases will result. Section 16 of the act provides that "all contracts, agreements, and arrangements between common carriers" which under section 6 the carriers are required to file "shall be preserved as public records in the custody of the secretary." It is therefore clear that division sheets or statements that are filed with the Commission must be considered public records.

The Commission is advised that contrary to the usual practice certain carriers buy company fuel f. o. b. the junction point with their own lines. So long as this practice is continued the carriers participating in such transactions are not subject to the order, but should the purchasing carrier at any future time contract for fuel to be delivered to it at a point on its line and thus secure for itself a division of the rate from the point of origin to that destination, it is expected that the participating carriers will file the division sheets or statements as required by the order.

The order in this proceeding does not, of course, apply to intrastate shipments.

SS I. C. C.

No. 7085.

MISSION BREWING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted March 16, 1915. Decided February 19, 1916.

1. Rates on beer in carloads from San Diego, Cal., to points on the Atchison, Topeka & Santa Fe Railway in Arizona and New Mexico not shown to be unreasonable or unjustly discriminatory.
2. Joint through rates from San Diego to points on the line of the Southern Pacific Company and its connections in Arizona and New Mexico, and to El Paso, Tex., should be established, and parties should agree upon specific rates.

W. D. Van Nostran for complainant.

T. J. Norton, U. T. Clotfelter, F. H. Wood, and C. W. Durbrow
for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complainant corporation ships beer from its brewery at San Diego, Cal., to points in New Mexico and Arizona over the rails of defendants, the Atchison, Topeka & Santa Fe Railway Company, hereinafter termed the Santa Fe; the Southern Pacific Company, hereinafter termed the Southern Pacific; and their connections.

By complaint, filed July 6, 1914, it alleges that the carload rates on beer in wood, and in glass, boxed, from San Diego to El Paso, Tex., Albuquerque, N. Mex., and certain points west thereof in New Mexico and Arizona are unjust and unreasonable, and unjustly discriminatory as compared with rates to those destinations from San Francisco, Cal., Kansas City and St. Louis, Mo., Omaha, Nebr., and Chicago, Ill. It prays reparation, and the establishment of through routes and joint rates to stations on the line of the Southern Pacific.

The Santa Fe has its own rails from San Diego to the territory of destination via Barstow, the junction with its main line from San Francisco.

1. The chief ground of complaint, as testified by the vice president of complainant, is that rates from San Diego are disproportionately high in comparison with those from San Francisco and the other producing or distributing points named in the complaint.

The rates to Santa Fe stations in Arizona and New Mexico are the same from San Diego as from Los Angeles, 126 miles nearer. They are commodity rates and grade up from 40 cents at Needles, Cal., and Parker, Ariz., to 75 cents at Albuquerque. San Francisco takes a differential 10 cents higher. All rates in this report are stated in cents per 100 pounds.

St. Louis, Chicago, and Omaha take differentials over Kansas City, which may be treated as representative. From Kansas City rates are graded from 65 cents at Albuquerque to \$1 at Needles and Parker.

Albuquerque is 972 miles from San Diego, 889 from Kansas City. Transportation conditions from the latter point are more favorable, especially since completion of the Belen cut-off, connecting at low grade the Southern Kansas division of the Santa Fe with its main line to the coast. By this route the distance from Kansas City to Albuquerque is 925 miles.

Upon all the facts of record we find that the present adjustment to points on the Santa Fe is not shown to be unreasonable, or unduly prejudicial to San Diego or complainant.

2. To Lordsburg, N. Mex., prior to June 2, 1914, a commodity rate of 60 cents on beer, in wood only, had been in effect from San Diego via the Santa Fe to Deming, N. Mex., the El Paso & Southwestern to Hachita, N. Mex., and the Arizona & New Mexico to destination, an aggregate of 1,254 miles. This rate was established some years ago to meet a Southern Pacific rate of 60 cents from Los Angeles, 666 miles, which was subsequently canceled.

The Santa Fe was carrying higher rates to intermediate points, and therefore, on June 2, 1914, canceled the commodity rate of 60 cents to Lordsburg, leaving the fifth-class rate of \$1.08 applicable. We have repeatedly held that the removal of fourth section violations is not in itself a justification of resulting increased rates. In this instance we find that cancellation of the 60-cent rate for a three-line haul over the circuitous route described has been justified.

3. To Phoenix, Ariz., prior to June 12, 1914, a joint through commodity rate of 55 cents was applicable from San Diego via the Santa Fe to Los Angeles, Southern Pacific to Maricopa, Ariz., and defendant Arizona Eastern, a subsidiary of the Southern Pacific, to destination. On that date the present rate of 70 cents, which is the aggregate of the intermediate rates to and from Los Angeles, became effective over the same route. It does not appear that any shipment has been made by that route since the increase. The rate now in effect via the Santa Fe, a longer route, is 55 cents. No justification was made of the increased rate, and, as the burden to justify was upon the carriers, we find that the former rate of 55 cents must be restored.

4. No joint through rates on beer are applicable from San Diego to points on the Southern Pacific proper. Such shipments move via the Santa Fe to Los Angeles or Colton, Cal., and thence via the Southern Pacific, which has no line from San Diego. The rates applicable are made by combination of the intermediate rates to and from Los Angeles.

The factor to Los Angeles is 15 cents. From Los Angeles to Southern Pacific stations the rates range from 34 cents at Yuma, Ariz., to \$1.08 at El Paso, and the combination results in corresponding through rates from San Diego of 49 cents and \$1.23. The distance to El Paso via Los Angeles is 940 miles. From Kansas City to these Southern Pacific stations the rates grade up from 66 cents at El Paso to \$1 at Yuma. The short-line distance to El Paso via the Rock Island and El Paso & Southwestern is 948 miles. From San Francisco the rate to Yuma, 720 miles, is 46 cents, being 3 cents less than from San Diego for a distance of 877 miles. To El Paso, 1,283 miles, the rate from San Francisco is \$1.18, as against \$1.23 from San Diego for 940 miles. Water competition between San Francisco and Los Angeles is said to have some influence on rail rates from San Francisco to points east of Los Angeles.

In a practical sense through routes from San Diego already exist, since shipments to Southern Pacific stations move on through bills of lading, and no reason appears on this record why joint rates should not apply to those routes. Indeed, in March, 1914, the Santa Fe "practically secured the consent" of the Southern Pacific to concur in joint rates from San Diego to Arizona points as follows: To Yuma, 44 cents; Phoenix, Tempe, and Mesa, 55 cents; Tucson, 60 cents; Benson, 65 cents; Bowie and Nogales, 70 cents; Lordsburg, 75 cents, with corresponding rates to other points; and on March 25, 1914, the Southern Pacific advised complainant by letter that joint through rates would be published upon statutory notice. Why they were not published does not appear.

The record does not afford us sufficient basis for prescribing specific rates or a differential basis. Negotiations should be reopened with a view to the establishment of through routes and joint rates from San Diego to destinations on the Southern Pacific, and also on the defendant, Arizona Eastern, El Paso & Southwestern, and Arizona & New Mexico railways. If the parties are unable to agree upon such joint rates, complainant may bring the matter to our attention by supplemental complaint.

We find that the facts disclosed will not sustain an award of reparation.

An order in conformity with our findings will be entered.

381 C. C.

No. 7796.

SOUTH CANON COAL COMPANY ET AL.

v.

COLORADO MIDLAND RAILWAY COMPANY ET AL.

Submitted October 28, 1915. Decided February 19, 1916.

Rates on bituminous coal in carloads from South Canon, Colo., to destinations in Wyoming, South Dakota, Nebraska, and Kansas, found to be unjustly discriminatory in so far as they exceed the rates from Walsenburg, Colo., to the same destinations by more than 25 cents per net ton. The rates from Cameo, Colo., not shown to be unjustly discriminatory.

Carle Whitehead, A. L. Vogl, and G. D. Duncan for complainants.

C. F. Donahue and Adolph Unfug for Trinidad Chamber of Commerce, intervener.

F. E. Gove and Yeaman & Gove for Victor-American Fuel Company and other interveners.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

E. E. Whitted and A. S. Brooks for Colorado & Southern Railway Company.

H. T. Rogers and G. H. Frazer for Colorado Midland Railway Company and receiver thereof.

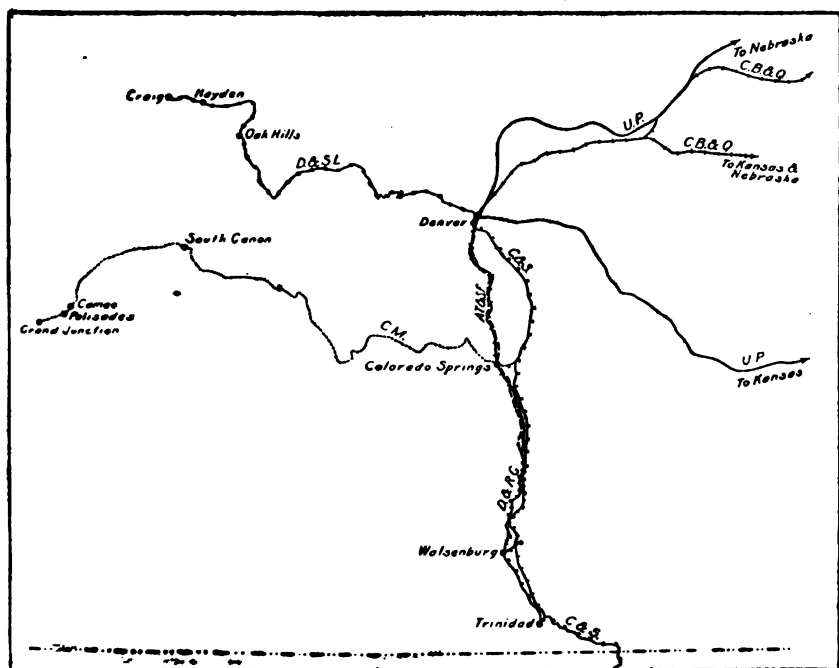
H. A. Scandrett, R. B. Scott, R. H. Widdicombe, and R. A. Brown for other defendants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainants, the South Canon Coal Company and the Grand Junction Mining & Fuel Company, own and operate coal mines located at South Canon and Cameo, respectively, in the western part of Colorado. Their complaint, filed March 1, 1915, alleges that the rates on bituminous coal in carloads from South Canon and Cameo to stations on the lines of the Chicago, Burlington & Quincy Railroad, the Union Pacific Railroad, the Chicago & North Western Railway, the St. Joseph & Grand Island Railway, and the Colorado, Kansas & Oklahoma Railroad, in Nebraska, Kansas, Wyoming, and South Dakota, subject complainants to undue and unreasonable prejudice and disadvantage in comparison with the rates from mines located in other coal-producing districts of Colorado to the same destinations. The complaint, in essence, is one of discrimination only. Rates are stated herein in dollars and cents per net ton.

It is urged that the rates from South Canon should not exceed the rates contemporaneously maintained from the Walsenburg district, and that the rates from Cameo should not exceed the rates from the Trinidad district. The joint rates now in effect from South Canon and Cameo are 50 cents higher than those from the Walsenburg mines, and 25 cents higher than those from the Trinidad district. While at present South Canon and Cameo take the same basis of rates, it is admitted by complainants that the rates from Cameo may properly be 25 cents higher than from South Canon. The accompanying map indicates the location of the different producing districts involved in this proceeding:



South Canon is on the Colorado Midland Railway, 214 miles west of Colorado Springs, Colo. Cameo is on the Rio Grande Junction Railway, 67 miles west of South Canon. The tracks of this road are used jointly by the Colorado Midland Railway and the Denver & Rio Grande Railroad. The mines of both complainants, therefore, are served by the Colorado Midland. The distances from Colorado Springs, South Canon, and Cameo to Denver, Colo., are 76 miles, 291 miles, and 358 miles, respectively. The Walsenburg district is some 185 miles south of Denver, Colo., on the lines of the Colorado & Southern Railway and the Denver & Rio Grande Railroad. The Trinidad district is about 28 miles south of Walsenburg. Com-

plainants also compete with the mines located in Routt county, Colo., on the line of the Denver & Salt Lake Railroad, 209 miles northwest of Denver. Oak Hills and Hayden are representative points in this group and take the Walsenburg basis of rates to a number of points on the lines of the Union Pacific and the Chicago, Burlington & Quincy in Kansas and Nebraska.

Coal produced at complainants' mines and destined to markets in Kansas, Wyoming, Nebraska, and South Dakota moves over the line of the Colorado Midland from South Canon or Cameo to Colorado Springs, Colo.; thence via the Colorado & Southern, which uses the tracks of the Atchison, Topeka & Santa Fe Railway to Denver, from which point it is carried to the destinations in question by one or more of the other defendants. The service performed east of Denver is precisely the same whether the coal originates at complainants' mines or in the Walsenburg district. In fact, the service north and east of Colorado Springs is the same in both cases, except that Walsenburg coal usually moves through Colorado Springs in through trains, while cars moving to Colorado Springs from Colorado Midland points are often placed in other trains at that point, occasioning some additional operating expense. As all the coal from complainants' mines and from the Walsenburg and Oak Hills districts must move through Denver to the destinations in question, the total distances from these producing fields differ only with the distances from the mines to Denver. The distance from South Canon to any of the destinations, therefore, is 106 miles and 82 miles greater than the distances from the Walsenburg and Oak Hills districts, respectively.

The coal produced by the complainants is a high-grade bituminous variety, which compares favorably with that produced in the Walsenburg district and brings the same price in the markets. Complainants find that the differential of 50 cents per ton in favor of producers located in the Walsenburg district makes it difficult for them to dispose of their coal at a profit in competition with the Walsenburg producers and producers in other districts to which the Walsenburg basis of rates has been extended. During the years 1912, 1913, and 1914 the Grand Junction Mining & Fuel Company sold in Kansas and Nebraska an average of 166 carloads of coal per year, but it is said that little or no profit was made on this coal because of the higher freight rate. Most of the coal produced by complainants is marketed in Colorado. For many years prior to April 15, 1913, the rates from South Canon to the destinations in question were 75 cents per ton higher than the rates from Walsenburg. On that date the Colorado Midland made a voluntary reduction of 25 cents per ton in the rates from complainants' mines.

The quantity of coal produced by complainants is small compared with the production in other Colorado fields. The following table taken from one of defendants' exhibits shows the production of coal in Colorado in tons for the last five years, by counties, complainants' mines being in Mesa and Garfield counties, the Trinidad mines in Las Animas county, and the Walsenburg mines in Huerfano county:

	1910	1911	1912	1913	1914
Huerfano county.....	2,443,491	1,728,420	1,880,300	1,644,212	1,686,606
Las Animas county.....	5,595,664	4,532,664	4,770,292	3,782,340	2,756,284
Garfield county.....	136,629	166,686	178,456	168,027	117,994
Mesa county.....	130,676	92,384	103,476	127,034	128,267

The Colorado Midland Railway, though named as the principal defendant, has expressed of record its willingness to join with the other defendants in establishing the rates sought by complainants. This carrier further states that if the rates sought by complainants are established it will accord to the lines east of Denver the same divisions out of the joint rates which they now receive out of the joint rates on coal from the Walsenburg mines, which are the same as the divisions now received by those carriers on coal originating at South Canon or Cameo. The other defendants, however, are unwilling to join in rates on the proposed basis.

The opposition of the Colorado & Southern to joining in the rates sought by the complainants is partially explained by the divisions accruing to the lines south of Denver on coal originating in the Walsenburg district on the one hand and at complainants' mines on the other. While the divisions vary slightly according to the destinations, it may be said generally that on coal originating in the Walsenburg district and destined to the consuming territory here involved the Colorado & Southern receives out of the joint rates an average division of about \$1.30 per net ton for its haul to Denver. On coal originating at South Canon or Cameo the Colorado & Southern receives for its haul from Colorado Springs to Denver an average of about 28 cents per net ton out of the joint rate. This division is fixed by a contract between the Colorado Midland and the Colorado & Southern, which gives the former considerable latitude in making rates from points on its line to points on or reached via the Colorado & Southern, particularly Denver and Pueblo, Colo.; the contract providing that the latter carrier shall receive a specified percentage of the rate. If joint rates lower than the present rates should be established from Colorado Midland points and if the Colorado Midland, by virtue of its authority under the contract just mentioned, should accord to the lines east of Denver their present divisions, the shrinkage in the divisions received by the lines south of Denver

would fall on either the Colorado & Southern or the Colorado Midland, or be shared by both. Since the Colorado & Southern now receives for its haul from Colorado Springs to Denver a division of approximately 28 cents on coal originating at South Canon and Cameo, and since the division which it receives for its haul from the Walsenburg mines is about \$1.30, it is evident that even under the present rates it is to the advantage of the Colorado & Southern to haul coal from the Walsenburg district rather than from Colorado Midland points. This evidence, coupled with evidence to the effect that competition for this consuming territory is severe, and that any coal marketed there from one district necessarily means the exclusion of that much coal from competing districts, explains in part the opposition of the Colorado & Southern to the complaint, and also accounts for the interest displayed by the Trinidad Chamber of Commerce and by coal companies operating in the Trinidad and Walsenburg districts, as interveners in this proceeding.

The lines east of Denver also oppose the establishment of rates lower than those now in effect. While their divisions would not be less under the proposed arrangement than they receive at present, they are opposed, as a matter of principle, to being parties to joint rates which they consider too low, and they fear that a reduction in these rates would lead to similar reductions in other rates in which they are more immediately interested. They contend that South Canon and Cameo are so unfavorably located as compared with the Walsenburg and Trinidad mines that an allegation of unjust discrimination can not be predicated on the present differences in the rates.

The Colorado Midland traverses a mountainous region which is sparsely settled. Its operating conditions are extremely difficult. The maximum adverse grade between South Canon and Colorado Springs is 3.25 per cent, while the maximum adverse grade between Walsenburg and Colorado Springs is 1.4 per cent. A locomotive which is able to haul 1,483 tons from Walsenburg to Colorado Springs can haul only 642 tons from South Canon to Colorado Springs.

The Colorado Midland has been in poor financial condition for a number of years and has been in the hands of the receiver since December, 1912. Its operating ratio for the fiscal year 1914 was 104.29 per cent. Coal and ore constitute a large proportion of its tonnage, coal traffic alone being 26 per cent of the whole. Special efforts have recently been made to improve its financial condition by increasing its tonnage, and it is the opinion of the road's officials, aided by expert advice, that the proposed reduction in the rates from South Canon and Cameo will materially increase the output of complainants' mines and that the financial condition of the railroad will be correspondingly improved.

The other defendants sharply disagree with the Colorado Midland in this respect. They contend that the operating conditions on this road are so unfavorable that a reduction in the rates and the consequent shrinkage in the Colorado Midland's divisions would impair rather than augment that carrier's revenues. Some doubt as to the probable effect of the reductions in rates on the revenues of the Colorado Midland results from the fact that there is no certainty as to the exact proportions in which the divisions accruing to the Colorado & Southern and the Colorado Midland as a result of the proposed reduction would be shared by them. The contract between them, to which reference has already been made, has been canceled, effective May 1, 1916, at the request of the Colorado & Southern. It appears that the Colorado Midland is willing to accept 5 mills per ton-mile for its haul. For the haul of 214 miles, from South Canon to Colorado Springs, a revenue of 5 mills per ton-mile would yield a per car revenue of \$35.31, based on the present average loading of 33 tons of coal. It is said that this revenue per car compares favorably with the per car-mile revenues which the Colorado Midland receives for similar hauls for the transportation of ores and concentrates, oranges, sugar, and a number of other commodities.

Complainants do not dispute defendants' contention that the operating conditions on the Colorado Midland are less favorable than on the Colorado & Southern, nor do they deny that the distances from their mines to the destinations in question are so much greater than the distances from the Walsenburg district that, under ordinary circumstances, some difference in the rates might be justified. Their principal contention, however, is that in making rates from the Colorado mines the defendants have to a large extent disregarded differences in distance by grouping some of the producing districts under a common rate regardless of their comparatively unfavorable location. It is shown, for example, that the defendants, Union Pacific and Chicago, Burlington & Quincy, have voluntarily established the Walsenburg basis of rates from the Routt county mines to a large number of points on their lines in Kansas and Nebraska. In *Coal Rates from Oak Hills, Colo.*, 30 I. C. C., 505, we held that the Walsenburg basis should also be established from Oak Hills to points in Kansas and Nebraska on the Chicago, Rock Island & Pacific Railway; our conclusion being predicated to some extent on the fact that the carriers had voluntarily established the Walsenburg basis of rates from Oak Hills to other points in Colorado, Kansas, and Nebraska. Divisions of these joint rates were prescribed in our supplemental report in the case cited, 35 I. C. C., 456. The Walsenburg basis also applies from Rock Springs, Wyo., to points on the Union Pacific in Nebraska and has recently been extended by voluntary action of the carriers to Kemmerer, Wyo., 85 miles west of Rock Springs on the
38 I. C. C.

Oregon Short Line Railroad, and to Evanston, Wyo., 115 miles west of Rock Springs on the Union Pacific. The Walsenburg basis is also applicable from Kirby, Wyo., on the Chicago, Burlington & Quincy, to points in Nebraska on that line. One of defendants' principal witnesses admitted that "the Walsenburg basis of rates is being spread around regardless of distance and regardless of operating conditions," and that the filing of the present complaint was a natural sequence.

We can not lose sight of the fact that the Walsenburg rates have been extended by voluntary action of the carriers to other producing points which are not as favorably located as is the Walsenburg group. The Routt county coal is similar in quality to that produced at South Canon and Cameo and is sold in the same markets. The record shows that operating conditions on the Denver & Salt Lake Railroad, on which the Routt county mines are located, are severe. This road, like the Colorado Midland, traverses a mountainous region. Both lines cross the Rocky Mountains. The Denver & Salt Lake Railroad has a considerable mileage of 2 per cent grade, and for 27 miles there is a 4 per cent grade. The distance from South Canon to Denver, as stated, is only 82 miles greater than that from the Oak Hills district.

Complainants show that many of the points of destination are grouped, and advance that fact as an added reason for disregarding the greater distance from their mines. For example, the rate of \$3.50 from the Walsenburg mines applies to Haigler, Nebr., 362 miles from Walsenburg, and also as far east as Hastings, Nebr., 566 miles from Walsenburg. The rate of \$3.75 from the Walsenburg district applies not only to Alliance, Nebr., 418 miles from Walsenburg, but to Table Rock, Nebr., 700 miles from Walsenburg.

Exhibits filed by defendants show that the rates from South Canon and Cameo compare favorably with the rates from most of the other producing points, and that the rates sought by complainants would yield materially lower ton-mile revenues than those from Walsenburg. The following table compiled from one of defendants' exhibits compares the distances and rates and ton-mile earnings from various producing points in Colorado to 23 typical destinations on the Chicago, Burlington & Quincy in Kansas and Nebraska:

From—	Average distance.	Rate per net ton.	Average revenue per ton-mile.
	<i>Miles.</i>		<i>Mile.</i>
Walsenburg.....	627	\$3.75	\$3.98
Trinidad.....	655	4.00	6.11
Routt county.....	651	3.75	5.76
South Canon (present rate).....	733	4.25	5.79
South Canon (rate sought).....	733	3.75	5.11
Palisade ¹ (present rate).....	800	4.25	5.31
Palisade ¹ (rate sought).....	800	4.00	5.00

¹Palisade is 4.3 miles west of Cameo and takes the Cameo rates.

An exhibit filed by the Union Pacific shows the present rates from certain coal fields in Colorado and Rock Springs, Wyo., to typical destinations on its line in Kansas and Nebraska, together with the distances and revenues per ton-mile. A recapitulation of the exhibit with the average distances and average revenues per ton-mile follows:

To 50 typical destinations on the Union Pacific Railroad in Kansas and Nebraska from—	Average distance.	Average revenue per ton-mile.
	<i>Miles.</i>	<i>Mills.</i>
Walsenburg.....	637	5.74
Oak Hills.....	661	5.53
South Canon.....	743	5.59
Cameo.....	810	5.13
Rock Springs.....	757	4.97

It will be observed that the average revenue per ton-mile yielded by the rate from South Canon exceeds that afforded by the rate from the Oak Hills district, although the average distance from Oak Hills is 82 miles less. The comparatively low earnings yielded by the rate from Rock Springs are significant, especially in view of the fact, already noted, that the same rate applies from Kemmerer, 85 miles, and from Evanston, 115 miles, west of Rock Springs. The coal produced at Rock Springs is a high-grade bituminous variety similar to that produced at Oak Hills, South Canon, Cameo, and Walsenburg. Rock Springs, however, is located on the Union Pacific, so that only a one-line haul is required to all stations embraced in the exhibit upon which these figures are based.

If the rates from South Canon were reduced 25 cents, and if the rates from Routt county, Walsenburg, and the Palisade-Cameo districts remained unchanged, the result, as reflected in the rates to the destinations shown in the two tables just preceding, would be as follows:

To 50 typical destinations on the Union Pacific Railroad in Kansas and Nebraska from—	Average distance.	Average revenue per ton-mile.
	<i>Miles.</i>	<i>Mills.</i>
Walsenburg.....	637	5.74
Oak Hills.....	661	5.53
South Canon.....	743	5.26 ¹
Cameo.....	810	5.13

¹ Based on average rate 25 cents less than present average rate.

To 23 typical destinations on the Chicago, Burlington & Quincy Railroad from—	Average distance.	Average revenue per ton-mile.
	<i>Miles.</i>	<i>Mills.</i>
Walsenburg.....	627	5.98
Routt county.....	661	5.76
South Canon.....	733	¹ 5.46
Palisade.....	800	5.31

¹ Based on rate of \$4, 25 cents less than present rate.

Complainants allege that no joint through rates are published from complainants' mines to destinations on the Chicago & North Western Railway, the St. Joseph & Grand Island Railway, and the Colorado, Kansas & Oklahoma Railroad, and that as a result complainants have been unable to market their coal at points located on those lines. The tariffs show, however, that joint through rates are published from South Canon and Cameo to points on the St. Joseph & Grand Island Railway, and we can not find that joint rates should be established to points on the other lines named, no evidence having been addressed to that issue.

Upon consideration of all the evidence of record we are of the opinion, and find, that the rates from South Canon to destinations in Kansas, Nebraska, South Dakota, and Wyoming on the lines of the Union Pacific Railroad, the Chicago, Burlington & Quincy Railroad, and the St. Joseph & Grand Island Railway are, and for the future will be, unjustly discriminatory against complainants to the extent that they exceed by more than 25 cents per net ton the rates contemporaneously maintained to the same destinations from the Walsenburg district. The complainants admit that the rates from the Cameo-Palisade district should be 25 cents higher than from South Canon. We do not find that the present rates from the Cameo-Palisade district are unjustly discriminatory.

An appropriate order will be entered.

88 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 695.
CAST-IRON PIPE FROM NORTH CAROLINA POINTS.

Submitted January 7, 1916. Decided February 18, 1916.

Proposed increased rate on cast-iron pipe in carloads from Charlotte, N. C., to Pacific coast terminals found not justified, but respondents authorized to establish a rate which shall not exceed that from Chattanooga, Tenn., or Birmingham, Ala., by more than 5 cents per 100 pounds.

T. J. Norton and F. E. Andrews for respondents.

E. L. Travis and W. S. Creighton for protestant.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The respondents herein propose by cancellation to make what amounts to an increase in the rate on cast-iron pipe in carloads from Charlotte, N. C., to Pacific coast terminals. The schedules carrying the cancellations were filed to become effective August 15, 1915, but upon protest of the Charlotte Shippers & Manufacturers Association they were suspended until June 13, 1916. The term cast-iron pipe as herein used will be understood to include cast-iron pipe connections.

About 12 years ago a rate of 65 cents with a minimum of 30,000 pounds was published on cast-iron pipe to Pacific coast terminals from practically all the territory in the United States east of Colorado common points, except that south of the Ohio and Potomac rivers and east of the Mississippi River. This 65-cent rate is still in effect from all the points referred to, but the minimum since July 15, 1915, has been 40,000 pounds. About two years after its establishment the same rate with a minimum of 30,000 pounds was extended to Birmingham, Ala., and points grouped with it, and Chattanooga, Tenn., and somewhat later to Charlotte. It also applies at present from Savannah, Atlanta, and other points in Georgia. On May 22, 1915, an additional rate of 55 cents with a minimum of 60,000 pounds was made effective from the Birmingham group, Chattanooga, and Charlotte, and Chicago territory, and on July 15, 1915, it was extended to practically all the points from which the 65-cent rate applied, except those east of Chicago, Ill., and north of the Ohio and Potomac rivers, and those in Georgia. Apparently the 65-cent rate with the lower minimum is seldom used where the 55-cent rate with the

higher minimum is available, and the practical effect of the proposed cancellations would be an increase of 10 cents per 100 pounds in the present rate from Charlotte. It is testified on behalf of respondents that the instructions from the transcontinental lines to their tariff agent for the promulgation of the 55-cent rate last May did not specifically include Charlotte, and that the publication of the rate in so far as that point is concerned was a mistake on the part of his office. Charlotte is deemed to be in the same zone as Pittsburgh, Pa., and New York City, from which points the only rate was 65 cents, and the cancellation here under suspension was filed to restore the Charlotte rate to that basis. The same rates as apply from Charlotte are published from High Point, N. C., but there is no longer any movement from the latter point, as the only manufacturer located there has moved to Birmingham, Ala.

Respondents state that they have had no complaints against the 65-cent rate as applied from any point. Protestant admits that the present rate of 55 cents from Charlotte is low and says that it would be satisfied to have it canceled provided its application from Birmingham and Chattanooga is also eliminated. It therefore seems clear that this case does not involve the reasonableness of the rate itself, but concerns only the rate relationship.

Cast-iron pipe is manufactured at Bridgeport, Conn., Brooklyn, N. Y., Philadelphia, Pa., and other points in seaboard territory, and before the Panama Canal was closed by slides very low ocean rates were offered from the eastern ports to Pacific coast terminals. The 55-cent rate was established to enable Chicago, Birmingham, and Chattanooga to compete with the eastern manufacturers who could ship on the ocean rates, and thereby to enable carriers serving those points to haul a portion of the traffic to the Pacific coast. Birmingham and Chattanooga under a long recognized policy were given the same rate as Chicago. But Charlotte, as above indicated, was regarded by respondents as in the same zone as Pittsburgh and New York. The 55-cent rate to the Pacific coast terminals is lower than to intermediate points, and was published under authority of Fourth Section Orders Nos. 124 and 4917. The carriers some time ago filed an application under section 4 of the act by which they asked authority to extend the 55-cent rate as far east in central freight association territory as Pittsburgh, and at the same time to maintain higher rates to points intermediate to the terminals. This application has been heard, but not decided. The ocean rates from the seaboard via Panama Canal, which might form the basis for the relief sought, are not now available to shippers, owing to slides in the canal. Respondents insist that Charlotte should not have a lower rate than points in seaboard territory, but their witness expressed the opinion

that the 55-cent rate might voluntarily be extended to Charlotte if the application is granted and the rate published from Pittsburgh.

Most of this traffic to the Pacific coast points moves via Memphis. The haul from Charlotte is about 400 miles greater than from Birmingham and Chattanooga, and the transcontinental lines deem the 55-cent rate rather low to be extended as far east as Charlotte. The Southern Railway, which serves Charlotte, seems desirous of keeping it on a rate parity with the two southern competing points of production, but demands a greater division of the through rate than on traffic from those points.

The protest which gave rise to this proceeding was filed on behalf of the Charlotte Pipe & Foundry Company which manufactures what is known as soil pipe. It ships about one-fourth of its annual output of 7,500 tons to Pacific coast territory, where it has established three agencies. Its competition there is principally with the Birmingham district, which manufactures more soil pipe than any other district in the United States. The pipe company's business has developed under the equality of rates which has existed during the past eight years, and it objects to the proposed cancellation which would change an adjustment of long standing and practically drive it from the Pacific coast market.

The differential Charlotte over Birmingham, under the proposed adjustment, would be 10 cents per 100 pounds, or \$2 per ton. Protestant points out that this exceeds the differentials on like traffic to other western points, which range from 15 cents per ton to \$1.90 per ton. The following table shows some of the comparisons offered:

To—	Rates per ton from—		Differential, per ton.
	Charlotte.	Birmingham.	
Fargo, N. Dak.....	\$10.61	\$10.46	\$0.15
Deadwood, S. Dak.....	18.45	17.95	.50
Des Moines, Iowa.....	6.35	5.85	.50
Kansas City, Mo.....	6.95	5.95	1.00
Denver, Colo.....	¹ 14.75	13.75	1.00
Salt Lake City, Utah.....	² 17.05	16.05	1.00
Spokane, Wash.....	² 18.90	17.00	1.90

¹ St. Louis combinations used.

² Memphis combinations used.

Protestant urges that the differential of \$2 on Pacific coast business is entirely out of proportion and violates the well-recognized principle that differentials should decrease and finally almost disappear with the increase in distance. Counsel for respondents excepted to the introduction of the above comparisons on the ground that the circumstances surrounding the different rates were substantially dissimilar.

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Respondents did not undertake to show in what way the circumstances affecting the traffic to the various points named in the above table are dissimilar, but as a matter of fact such apparent inconsistencies as are there disclosed are not unexpected in cases involving a transcontinental rate situation with an abnormally depressed through rate. There a departure from, rather than an adherence to, the generally recognized rule of diminution of differentials with distance and of proportionate differentials to related points may be justified. The differences in the differentials are clearly not the result of design, but are merely incidents, or accidents, so to speak, growing out of carriers' lawful but limited rights to meet the competition of carriers and to recognize certain commercial conditions. The differentials here involved are not differentials in the commonly accepted meaning of the term. While we can not accept respondents' view that protestant's exhibit comparing the differentials was not properly admissible in evidence, manifestly it is of little or no practical help in arriving at a proper determination of the issues presented in this case.

The parity of rates which has existed between Birmingham and Charlotte for the past eight years has enabled the latter point to overcome some of the disadvantages of its location in respect of the traffic here involved, and the protest is grounded upon the proposition that the respondents should continue the same relative adjustment. Carriers may have a limited right to encourage and protect by rate equalization communities which are under natural disadvantages, notwithstanding the fact that substantially more burdensome transportation conditions are encountered in handling the traffic from such points. The Commission, however, can not prescribe a rate that is less than reasonable, nor can it require the removal of discrimination unless it is found to be unjust. The reasonableness of the proposed rate is not questioned, and it is our view that the difference in distance alone under all the circumstances renders a difference in rates justifiable and warrants respondents in excepting Charlotte from the 55-cent blanket. We therefore conclude that we can not, with propriety, require the continuance of the present relationship on the low rate now in effect. But would the proposed spread of 10 cents between the rates be justified? In other words, does the proposed 65-cent rate from Charlotte bear a reasonable relation to the 55-cent rate from Chattanooga and Birmingham? Without subscribing to the probative character of the comparisons offered by protestant, we are led to the conclusion, upon consideration of all the facts, circumstances, and conditions appearing of record, that the proposed adjustment on its face results in too great a differential against Charlotte, and that its effect would be to prefer Chattanooga

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and Birmingham unduly and to prejudice Charlotte unduly. We therefore find the proposed rate has not been justified. However, we are of opinion that respondents have justified the establishment of a rate from Charlotte, with a minimum of 60,000 pounds, which shall not exceed the rate from Chattanooga or Birmingham by more than 5 cents per 100 pounds. Such a rate may be established upon statutory notice.

An order will be entered requiring the cancellation of the schedules under suspension.

No. 6151.

LINDSAY & COMPANY, LIMITED, ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted October 18, 1915. Decided February 18, 1916.

Charges collected for the transportation of grapefruit in straight carloads and in carloads mixed with oranges from Jacksonville, Fla., to Helena, Great Falls, Billings, and Butte, Mont., found unreasonable. Reparation awarded.

O. W. Tong and L. M. Tracy for complainants.

J. F. Finerty for defendants.

REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

HALL, *Commissioner*:

By order dated June 3, 1915, the record in this proceeding was reopened for the purpose of determining whether the complainants have been damaged by reason of the collection of charges found unreasonable in our former report, *Lindsay & Co. v. N. P. Ry. Co.*, 33 I. C. C., 150, and are entitled to reparation on certain shipments of grapefruit and oranges, in straight and mixed carloads, to the extent that the rate and carload minimum applied exceeded the rate and carload minimum found reasonable in that report. All rates are stated in cents per 100 pounds.

In *Lindsay & Co. v. G. N. Ry. Co.*, 25 I. C. C., 424, a proceeding brought by one of the complainants here, we found the through rate of \$1.80 for the transportation of grapefruit from Jacksonville and High Springs, Fla., when from beyond, to Helena, Mont., unreasonable to the extent that it exceeded \$1.62 $\frac{1}{2}$, the rate then applicable 88 I. C. C.

upon grapefruit from Jacksonville to Seattle, Wash., and other Pacific coast points. Reparation was awarded upon that basis and the carriers were directed to maintain the lower rate for two years from and after March 1, 1913. A minimum of 26,000 pounds applied in connection with the Seattle rate, while that under the Helena rate was 24,000 pounds. In establishing the rates to Helena prescribed by our order in that proceeding, the carriers voluntarily published the same rates to Butte, Billings, and Great Falls, but at the same time advanced the carload minimum to Helena and the latter destinations from 24,000 pounds to 26,000 pounds. The original report in the present proceeding, *Lindsay & Co. v. N. P. Ry. Co.*, *supra*, found the higher minimum unreasonable. It also found that the rate of \$1.76 for the transportation of oranges in straight carloads, and in carloads mixed with grapefruit, was unreasonable to the extent that it exceeded \$1.62½, and that the carload minimum of 26,000 pounds on oranges in straight carloads, or mixed with grapefruit, was unreasonable to the extent that it exceeded 24,000 pounds.

Complainants now urge that by reason of our reports in this case and the former proceeding, they are entitled to reparation upon 28 straight carloads of grapefruit and 2 carloads of grapefruit mixed with oranges, which moved from basing points in Florida to Helena, Great Falls, Butte, and Billings, Mont., between March 3, 1910, and May 21, 1913. Claims for reparation upon such of these shipments as moved more than two years prior to September 26, 1913, date of the filing of the complaint herein, had been informally presented to the Commission within the statutory period.

Some of the grapefruit moved from Jacksonville to Helena and Butte on the old rate of \$1.80, carload minimum 24,000 pounds, and as to these shipments the carriers concede that complainants are entitled to reparation.

The other straight carloads of grapefruit moved under the \$1.62½ rate, but with a minimum of 26,000 pounds. To the mixed carloads of grapefruit and oranges a rate of \$1.76 was applied with a minimum of 26,000 pounds. The carriers contend that the rates and carload minima under which these shipments moved were not unreasonable prior to the issuance of the Commission's order in this case. We are of opinion and find that the rate collected by defendants on the shipments of grapefruit and oranges in mixed carloads was unreasonable to the extent that it exceeded a rate of \$1.62½; and that the minimum of 26,000 pounds applied by defendants to the shipments of grapefruit and oranges in straight and mixed carloads was unreasonable to the extent that it exceeded 24,000 pounds.

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We further find that the shipments were made as stated above and that complainants paid and bore charges thereon at the rates and under the carload minima found unreasonable; that complainants have been damaged to the extent of the difference between the amounts which they paid and the amounts which they would have paid at the rates and carload minima found reasonable; and that the complainants are respectively entitled to reparation in the sums set forth below, with interest:

Lindsay & Company, Limited	\$503.28
Lindsay Fruit Company.....	91.00
Capital Commission Company.....	305.90
Jones Fruit Company.....	45.50
Gamble Robinson Company.....	113.50
Butte Potato & Produce Company.....	228.00
Viriden & Currie Company.....	352.84

An order will be entered accordingly.

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No. 7573.

F. S. ROYSTER GUANO COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted October 29, 1915. Decided February 18, 1916.

Upon complaint alleging that rates on commercial fertilizer in carloads from Norfolk to destinations in North Carolina are unreasonable *per se*, and also subject complainant, its traffic, and the city of Norfolk to undue prejudice and disadvantage as compared with competitors operating in North Carolina; *Held*, That defendants should establish the mileage rates prescribed herein as maxima and remove the undue and unreasonable prejudice and disadvantage found to exist.

C. J. Collins for complainant.

R. Walton Moore, A. P. Thom, jr., and C. D. Drayton for Atlantic Coast Line Railroad Company, Southern Railway Company, and Seaboard Air Line Railway.

C. M. Bain for Norfolk Southern Railroad Company.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

This proceeding has to do with the outgrowth of that reported in *Royster Guano Co. v. A. C. L. R. R. Co.*, 31 I. C. C., 458, Docket No. 6206, decided July 1, 1914, and hereinafter referred to as the former case. The complainant is the same as the complainant therein. Two of the present defendants, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway, were the defendants there. Two other carriers, the Southern Railway Company and the Norfolk Southern Railroad Company, have been brought in with them as defendants here.

The complaint in the former case alleged that commodity rates on fertilizer in carloads from Norfolk, Va., to certain destinations in North Carolina on the lines of the two defendants were unreasonable, and unduly prejudicial to Norfolk as compared with intrastate rates from Wilmington, N. C. In our former report above cited the pertinent facts and our conclusions were stated and need not be repeated. The order prescribed a mileage scale, stating rates per ton of 2,000 pounds, carload minimum 20,000 pounds, for distances over 30 and not exceeding 350 miles, to be applied as maxima by the two defendants to carload shipments of fertilizer from Norfolk to points on

their lines in North Carolina north and east of Hamlet, N. C., effective October 15, 1914.

By proclamation of the governor of North Carolina certain state rates were promulgated to become effective October 13, 1914. This was done pursuant to a statute of that state enacted October 13, 1913. The carriers published these rates under protest to the governor and to this Commission. Rates on fertilizer were included, based on a new scale showing material reductions from the state scale in effect when our order was entered on July 1, 1914. Following publication of this lower scale, complainant on December 14, 1914, filed the present complaint, alleging that the present rates from Norfolk to destinations in North Carolina are unreasonable *per se*, and also subject complainant, its traffic, and the city of Norfolk to undue prejudice and disadvantage, as compared with competitors operating in North Carolina. Reparation is asked.

It was stated on behalf of complainant that this proceeding would not have been brought if it had not been for the publication of the lower scale of intrastate rates.

Defendants in the former case have complied with our order therein. The Norfolk Southern has put into effect between points on its line the scale prescribed by us in the former case, and the Southern at the time of the hearing was proceeding to a like revision on that basis of its rates from Norfolk and the other so-called Virginia cities to points in North Carolina, as well as in the reverse direction, and on interstate and intrastate traffic generally in the southeast to the extent that, as to intrastate traffic, the consent of the various state commissions could be obtained. The Southern, at the request of complainant, which has a plant at Macon, Ga., has already published this scale to apply from Macon to points in Tennessee.

The evidence adduced by complainant was much the same as in the former case. Defendants relied principally upon the record and findings in that case. It appears that conditions affecting the transportation of fertilizer from Norfolk into North Carolina have not changed materially since our former report and order save for the action of the North Carolina authorities in reducing the intrastate rates. This the complainant concedes.

The parties are in accord in wanting uniformity of rates on fertilizer from Norfolk into North Carolina and between points in North Carolina to the extent necessary to prevent undue preference of one manufacturing point over another. They differ as to method; the complainant urging further reduction in the interstate rates prescribed by us in the former case and defendants seeking an order for removal of the alleged unjust discrimination with which they

could comply by increasing the North Carolina intrastate rates under the doctrine of the *Shreveport cases*, *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31; *Houston & Texas Ry. v. United States*, 234 U. S., 342.

There appears to be little uniformity in the rates for either the interstate or intrastate transportation of fertilizer in the southeast. In general the North Carolina scale is lower than the South Carolina and higher than the Georgia and Alabama scales, respectively. Manufacturers of fertilizer at Norfolk, in North Carolina, and in neighboring states, are in keen competition with one another. It is admitted of record by the parties that the rates prescribed by state authority on intrastate shipments of fertilizer in these states materially affect the level of interstate rates, and are in many instances their exact measure.

Nothing in the present record indicates that our findings in the former case were not consistent with the facts, circumstances, and conditions therein shown to exist.

On the contrary, the facts of record justify and require a finding that rates on fertilizer in carloads from Norfolk to destinations in North Carolina on the lines of all four defendants should not exceed those prescribed by us as maxima for the two defendants in the former case.

We are, therefore, of opinion and find that the rates of defendants for the transportation of commercial fertilizer from Norfolk to points on their lines in North Carolina are unjust and unreasonable to the extent that they exceed those hereinafter prescribed as maxima; and that for the future rates for such transportation of commercial fertilizer in carloads, carload minimum 20,000 pounds, should not exceed the following rates per ton of 2,000 pounds, which we find to be just and reasonable:

Distance, in miles.	Rate.	Distance, in miles.	Rate.
50 and over 30.....	\$1.50	150 and over 140.....	\$2.35
55 and over 50.....	1.55	160 and over 150.....	2.40
60 and over 55.....	1.60	170 and over 160.....	2.45
65 and over 60.....	1.65	180 and over 170.....	2.50
70 and over 65.....	1.70	190 and over 180.....	2.55
75 and over 70.....	1.75	200 and over 190.....	2.60
80 and over 75.....	1.80	210 and over 200.....	2.65
85 and over 80.....	1.85	220 and over 210.....	2.70
90 and over 85.....	1.90	230 and over 220.....	2.75
95 and over 90.....	1.95	240 and over 230.....	2.80
100 and over 95.....	2.00	250 and over 240.....	2.85
110 and over 100.....	2.10	275 and over 250.....	2.95
120 and over 110.....	2.20	300 and over 275.....	3.05
130 and over 120.....	2.25	325 and over 300.....	3.15
140 and over 130.....	2.30	350 and over 325.....	3.25

Defendants should not charge higher rates for the transportation of fertilizer from Norfolk to points in North Carolina than for like

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transportation within North Carolina, unless the circumstances and conditions affecting the respective services are so substantially dissimilar as to warrant the difference in rates. We find upon the record no evidence of substantially dissimilar circumstances and conditions in favor of the intrastate transportation. The advantage, if any, is with the service from Norfolk.

It follows, and we so find, that in maintaining and applying to carload shipments of commercial fertilizer from Norfolk to points in North Carolina higher rates than to similar shipments for like distances between points in North Carolina, defendants are subjecting complainant, its traffic, and the city of Norfolk to undue and unreasonable prejudice and disadvantage, and giving to shippers between points in North Carolina, their traffic, and localities in that state where commercial fertilizer is manufactured an undue and unreasonable preference and advantage, in violation of section 3 of the act. Defendants will be required to cease and desist from such violation.

For the reasons indicated in our former report we are of opinion and find that reparation should be denied.

An order will be entered in accordance with the foregoing findings, as also an order, effective therewith, vacating our order in the former proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 664.
HIDES TO BOSTON, MASS.

Submitted October 29, 1915. Decided February 29, 1916.

Proposed increased carload rate for the transportation of green salted hides from St. Paul, Minneapolis, and Minnesota Transfer, Minn., to Boston, Mass., and Boston rate points, via Sault Ste. Marie, Mich., not justified, and required to be canceled.

R. D. Rynder for Swift & Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The respondents herein operate a joint all-rail route from St. Paul, Minneapolis, and Minnesota Transfer, Minn., through Sault Ste. Marie, Mich., to Boston, Mass., and Boston rate points, including a number of places in New England where tanneries are located, to which from said Minnesota points they have since some time prior to 1910 maintained a rate of 44.6 cents per 100 pounds for the transportation of green salted hides in carloads of 36,000 pounds minimum weight. By tariff schedule, filed to become effective on June 22, 1915, they proposed to increase said rate to 54.5 cents. The operation of this schedule has been suspended until April 20, 1916, pending investigation, and the respondents are called upon in this proceeding to justify the proposed rate of 54.5 cents.

The present rate, when established, was equal to the combination to and from Chicago, Ill., then in effect, i. e., a proportional rate of 14.6 cents to Chicago plus a commodity rate of 30 cents east thereof. The factor of 14.6 cents was superseded on May 1, 1910, by a local rate of 20 cents. The respondents contend that at that time the present joint through rate should have been canceled, but offer no reason other than oversight for not having done so. Meanwhile, the rate from Chicago east has been raised from 30 cents to 34.5 cents. The suspended rate is the sum of these new factors, 20 cents west plus 34.5 cents east of Chicago.

When the case was called for hearing the respondents presented no witness and no testimony on deposition, but, by consent of the protestant, counsel for the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, who appeared on behalf of the respondents, read

a paper which was stated to have been prepared by the "traffic department," as follows:

G. F. D. No. 20058, I. C. C. 3635, effective June 22, 1915, named rate of 54½ cents per 100 pounds on green hides and pelts, carloads, minimum 36,000 pounds, from Minneapolis, St. Paul, or Minnesota Transfer to Boston, etc., via Soo line C. P. at Sault Ste. Marie, Mich., care Boston & Maine. This was suspended by supplement No. 1 to this tariff until October 20, 1915, and, pending restoration or reissue, the rate of 44.6 cents named in G. F. D. No. 11262, I. C. C. No. 2688, was to remain in effect.

This latter tariff, G. F. D. No. 11262, I. C. C. No. 2688, was based on a proportional rate of 14.6 cents from twin cities to Chicago and a 30-cent commodity rate east of Chicago to Boston and should have been canceled when the proportional rate of 14.6 cents expired May 1, 1910, but was not, due to some oversight. On that date the proportional rate of 14.6 cents on green salted hides from Minneapolis to Chicago when destined east thereof was advanced to the local rate of 20 cents per 100 pounds, and since that time the rate from Chicago to Boston has been advanced from 30 to 34½ cents, which would make a combination of 54½ cents, which was the rate we attempted to publish via Sault Ste. Marie, Mich., and which is now applicable via the Chicago gateway, our purpose being to equalize the rate on green salted hides applying via Chicago through the Sault Ste. Marie gateway.

The rate in and of itself of 44.6 cents per 100 pounds from Minneapolis to Boston, based on the minimum of 36,000 pounds, which is about the average weight per car, would give a rate of 6.9 (6.19) mills per ton-mile and a car-mile earning of 11 cents, which, compared with other rates in western trunk line territory on this commodity, is exceptionally low. The proposed rate of 54½ cents only gives a rate per ton per mile for the 1,442-mile haul from Minneapolis to Boston of 7.5 mills and a car-mile earning of 13.6 cents, which, compared with the exhibits shown in the hearing of I. C. C. Docket No. 7086, are below the average.

After reading the above into the record, respondents' counsel offered a paper which he designated as "Soo line Exhibit No. 1" and which contained a statement of various rates apparently intended for comparative purposes. Counsel for the protestant consented to the filing of this exhibit, but in doing so said:

I would like it noted of record that there is no witness here to be cross-examined.

Respondents' counsel then cited rates which had been established or approved by the Commission in other cases, and expressed the willingness of the Minneapolis, St. Paul & Sault Ste. Marie Railway Company to withdraw the proposed rate of 54.5 cents and to substitute therefor a rate of 49.5 cents, that being the domestic rate for like hauls of packing-house products. The protestant then called as a witness its chief rate clerk, who was sworn and testified at considerable length, and filed five exhibits in connection with his testimony in opposition to the proposed increased rate. We can not regard the showing made by the respondents as satisfactorily discharging the burden cast upon them under the statute to justify the proposed rates involved. Neither do we find any basis in the testimony of record

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for passing upon the reasonableness of the suggested rate of 49.5 cents, and we express no opinion as to whether this would be a reasonable rate or not. It follows that we must enter an order requiring the cancellation of the schedule under suspension. This action, however, will be without prejudice to a review of the disposition now made of the matter upon the conclusion of our investigation now pending as to the reasonableness and relationship of rates on live stock, fresh meats, packing-house products, and hides and pelts.

INVESTIGATION AND SUSPENSION DOCKET No. 631.
CENTRAL FREIGHT ASSOCIATION SAND AND GRAVEL
RATES.

Submitted December 3, 1915. Decided March 1, 1916.

Proposed increased rates on sand and gravel from Lake Erie ports to various points in central freight association territory not justified. Proposed increased rates on the same commodities from Tecumseh, Mich., to certain points in Ohio on the Detroit, Toledo & Ironton Railroad justified.

J. A. Scheuerman and J. M. Sternhagen for respondents.

Henry Rice for Queen City Sand & Supply Company, protestant.

J. S. Scobell for Erie Sand & Gravel Company, protestant.

REPORT OF THE COMMISSION.

McCHORD, *Chairman*:

By the schedules suspended in this proceeding the respondents proposed to increase the rates on sand and gravel in carloads from Erie, Pa., and from Cleveland, Port Clinton, Sandusky, and Toledo, Ohio, to various points in central freight association territory, effective May 5, 1915, and from Tecumseh, Mich., to points in Ohio on the Detroit, Toledo & Ironton Railroad, effective May 9, 1915. The schedules naming the increased rates, which have been suspended until March 2, 1916, were issued by the New York Central Railroad Company and Detroit, Toledo & Ironton Railroad Company, respectively. The New York Central Railroad Company did not attempt to justify the proposed increased rates from points on its line, expressing of record its willingness to continue the rates now in effect. The suspended supplement of the Detroit, Toledo & Ironton Railroad names increased rates on sand and gravel from Tecumseh,

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Mich., to points on the line of that carrier in Ohio as far south as and including Springfield, Ohio, and that carrier has attempted to establish the reasonableness of those rates. Protests against the increased rates proposed by the latter carrier were filed on behalf of the Lima Truck & Storage Company, of Lima, Ohio, and the Tecumseh Gravel Company, of Tecumseh, Mich., but no protestants interested in these rates were represented at the hearing.

The distance from Tecumseh to Denson, Ohio, the most northerly point involved, is 27 miles, and to Springfield, the most southerly point, 162 miles. The present and proposed rates to Denson are 21 cents and 25 cents, respectively, per net ton; to Springfield, 47 cents and 50 cents. The distance from Tecumseh to Lima, a representative destination, is 98 miles. Based upon an average load of 35 tons, which this respondent gives as the actual loading of this commodity, the present rate of 32 cents per ton to Lima yields a revenue of \$11.20 per car and 11.42 cents per car-mile. The revenue per ton-mile is 3.26 mills. Under the proposed rate of 40 cents the earnings would be \$14 per car, 14.28 cents per car-mile, and 4.08 mills per ton-mile. The present rate to Denson yields \$7.35 per car. The total movement of sand and gravel from Tecumseh from January 1, 1915, to October 31, 1915, was 997 cars.

The respondent shows that the rate on lake sand from Sandusky to Lima, via the Lake Erie & Western Railroad, is 50 cents per net ton, the distance being 88.8 miles, and that the rate from Toledo to Lima, via the Cincinnati, Hamilton & Dayton, is also 50 cents, for a distance of 70.2 miles. The rate on sand from Erie to Buffalo, 88 miles, is 68 cents. In *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 515, we established a maximum rate of $1\frac{1}{2}$ cents per 100 pounds, or 35 cents per net ton for the transportation of sand and gravel from Waukesha, Wis., to Chicago, Ill., a distance of approximately 100 miles.

We are of opinion and find that the Detroit, Toledo & Ironton Railroad has justified the proposed rates from Tecumseh to points on its line in Ohio, and an order will be entered vacating our orders in which those rates were suspended. We further find that the reasonableness of the rates proposed by the New York Central Railroad Company has not been justified, and our order will require their cancellation.

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INVESTIGATION AND SUSPENSION DOCKET No. 697.
CLASSIFICATION OF CYLINDERS.

Submitted January 24, 1916. Decided February 15, 1916.

Proposed change in southern classification rating of returned empty, coppered, or nickeled cylinders, described in the item under suspension, from sixth class to fifth class not justified, and item ordered canceled.

E. D. Mohr for respondents.

A. B. Hayes and *Charles Conradis* for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Item 30 on page 83 of southern classification I. C. C. No. 20, filed to take effect August 20, 1915, proposed to change the any-quantity rating of "cylinders, wrought iron or steel, welded or seamless, for compressed air or gases or liquids under pressure: Coppered or nickeled, empty, returned, loose, or in packages" from sixth class to fifth class. The Prest-O-Lite Company, Incorporated, of Indianapolis, Ind., protested the item, and it was suspended until June 18, 1916. Protestant alleges that the change proposed would discriminate in favor of competitors who ship painted cylinders and that the resulting rates would also be unreasonable. Respondents do not propose to change the present rating on any cylinders except returned empty, coppered, or nickeled cylinders.

Protestant has its principal plant at Indianapolis and manufactures acetylene gas there. The cylinders involved are used as containers for the gas, which is shipped from the plant to various distributing and refilling stations. The propriety of the official classification rating on cylinders of the same kind was considered in *Prest-O-Lite Co. v. B. & A. R. R. Co.*, 36 I. C. C., 545, which arose on a complaint by protestant. The nature and operation of protestant's business is stated in our report in that case. The cylinders are described and various details given relative to their proper classification rating in comparison with other cylindrical containers for acetylene and other gases. Repetition of this data in this report is unnecessary. We observe, however, that certain of protestant's re-charging plants are located in southern classification territory and territory from which the rates to southern points are controlled by the southern classification.

Previously to December 2, 1907, the southern classification rated empty "cylinders, iron or steel, n. o. s.," and "drums, iron or steel, n. o. s.," fifth class, but on that date a sixth-class rating was established on returned empty iron or steel barrels and drums. Effective November 1, 1912, empty cylinders, returned, also were rated sixth class. Southern classification I. C. C. No. 19, effective April 20, 1914, provided a rating for returned cylinders other than coppered or nickeled, but not for returned cylinders coppered or nickeled, or for empty iron or steel drums. Prior to April 20, 1914, however, the southern carriers applied for leave on less than statutory notice to continue the sixth-class returned rating both on empty coppered and nickeled cylinders and on steel drums, representing that it had been intended to continue this rating on these commodities. The application was granted and the sixth-class rating was continued in effect. The present rating on empty cylinders returned, including coppered or nickeled cylinders, therefore, is the same as on empty drums or barrels, and the rating proposed by the tariff item under suspension is the first real classification distinction between the different types of cylinders that has been attempted.

The official classification provides no separate rating on cylinders, returned. In the *Prest-O-Lite Case*, *supra*, complaint was made against the third-class less-than-carload rating applicable to empty coppered or nickeled acetylene gas cylinders. A fourth-class less-than-carload rating was contemporaneously applicable to such cylinders, empty, other than coppered or nickeled. The defendants sought to justify the distinction, but we found that there was no difference in the quality, value, or construction of the two kinds of cylinders that would justify different ratings. Defendants further sought to distinguish between steel cylinders used as containers for acetylene gas and cylinders used as containers for other than acetylene gases. Our answer to this contention was that—

Although the difference in the classification as between cylinders used as containers for acetylene gas when predicated upon the kind of outside finishing, and not upon the presence therein of asbestos disks saturated with acetone, the witness for the defendants urged that when a common steel cylinder taking a fourth-class rating is changed into a special container by adding thereto a substantial weight of higher rated articles, namely, asbestos and acetone, the changed cylinder should be given a higher rating. This testimony, however, does not justify the difference in the classification of cylinders used exclusively as containers for acetylene gas, some of which are coppered or nickeled and others painted, but all of which contain the asbestos disks saturated with acetone. * * * From the standpoint of weight, size, quality, and value no evidence was introduced to show a difference in the conditions of transportation as between the empty cylinders used for acetylene gas and other empty cylinders that would justify a difference in the classification.

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Our ultimate finding was that the third-class rating on empty coppered or nickeled acetylene gas cylinders in less than carloads was unreasonable and unjustly discriminatory, and a fourth-class rating was prescribed.

Respondents' contentions at the hearing were similar to the defendants' contentions in the *Prest-O-Lite Case, supra*. It is stated that coppered and nickeled cylinders are highly ornamental articles used almost exclusively as containers for automobile illuminating gas and that they are of considerably higher value than painted cylinders. But it appears that automobiles are now fitted with electric lighting devices and that a large number of protestant's cylinders formerly used as containers for automobile illuminant are now used interchangeably with painted cylinders for other services. Nor is there any material difference in the value of a cylinder according to whether it is painted or plated. Respondents, however, in their brief join protestant in a request that the Commission find that there is no justification for making a classification distinction based alone on the outside finish of these cylinders so as to place the empty return movement of one finish in a higher class than the same movement of another finish. Respondents state that the term "coppered or nickeled" was merely used to describe a particular type of cylinders. There admittedly is more reason for a classification distinction between iron and steel barrels or drums on the one hand and cylinders on the other than between the different types of cylinders involved.

The ratings applicable to these different kinds of cylinders except when returned empty are the same, and no difference is made in the ratings on gas according to the style of the cylinder in which it is transported. The southern classification rates acetylene gas fifth class, and as noted in the *Prest-O-Lite Case, supra*, its transportation is subject to the red-label regulations governing the transportation of explosives and other dangerous articles. The transportation of empty cylinders is not subject to such regulations.

The difference proposed in the classification of coppered or nickeled cylinders and cylinders not coppered or nickeled has not been justified, and no justification appears for rating the cylinders involved higher than the steel drums or barrels discussed. The item under suspension therefore will be ordered canceled.

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INVESTIGATION AND SUSPENSION DOCKET No. 709.
LAKE AND RAIL RATE CANCELLATIONS.

Submitted November 15, 1915. Decided March 1, 1916.

Proposed cancellation by certain of the respondent rail lines of joint rates in connection with the Port Huron & Duluth Steamship Company between points in trunk line territory and Duluth, Minn., and points south and west thereof, not justified.

H. C. Martin for Grand Trunk lines.

W. L. Jenks for Port Huron & Duluth Steamship Company.

T. A. McGrath for Minneapolis Civic & Commerce Association.

G. R. Hall for Commercial Club of Duluth.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

Tariffs of the Grand Trunk Railway system, designated as supplement No. 16 to I. C. C. No. 1535, supplement No. 10 to I. C. C. No. 2110, and I. C. C. No. 2297, filed to become effective September 15, 1915, propose to cancel the joint class and commodity rates on traffic from Duluth, Minn., and other ports at the head of Lake Superior to points in eastern trunk line territory, published in connection with the Port Huron & Duluth Steamship Company, which operates a line of boats between Port Huron, Mich., and Duluth, Minn. By tariff of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, designated as supplement No. 23 to I. C. C. No. 3868, filed to become effective October 8, 1915, cancellation is proposed of joint rail-lake-and-rail commodity rates published in connection with the same boat line from Minneapolis, Minn., and other points to eastern trunk line territory. By appropriate orders of the Commission the tariffs were suspended until July 13, 1916, pending investigation. Cancellation of the joint rates would leave in effect combination rates only, with the result that through freight charges via the Port Huron & Duluth Steamship Company's line would be materially increased.

The evidence of record shows that the tariffs filed by the Grand Trunk Railway system, hereinafter called the Grand Trunk, are the result of a dispute with the rail lines east of Buffalo over the divisions of the joint rates claimed by such rail lines. The Chicago, St. Paul, Minneapolis & Omaha did not appear at the hearing, and no evidence was offered in support of its tariff.

The Port Huron & Duluth Steamship Company is a common carrier, entirely independent of railroad ownership. At Duluth it connects with rail lines which serve Minneapolis and other interior points. At Port Huron traffic is interchanged with the Grand Trunk, whose lines connect at Buffalo with the eastern trunk lines. Through routes and joint rates via these lines, excepting the Pennsylvania east of Buffalo, have been in effect for many years; the freight tonnage over the water line during the season of navigation is considerable, and there is public demand for the continuance of such through routes and joint rates.

The question of through routes and joint rates in connection with the Pennsylvania east of Buffalo was before the Commission in a recent case, and we held that such routes and rates should be established and maintained for a period of two years, and that the rates should not exceed as maxima the joint rates in effect via other rail-and-lake and rail-lake-and-rail routes. *Port Huron & Duluth Steamship Co. v. P. R. R. Co.*, 35 I. C. C., 475. Portions of the evidence in that case were introduced and filed in this proceeding. On the record we have no doubt that the public interests will be best served by a continuance of through routes and joint rates, and we find nothing in the evidence to justify the cancellations proposed. The mere fact of disagreement between the carriers as to divisions does not prove that the joint rates are unreasonable, or that the routes over which they are applied should be abandoned. We hold that the proposed cancellations have not been justified and that the suspended tariffs should be canceled and that the through routes and joint rates applicable thereto should be maintained. It will be so ordered.

The carriers should make further endeavor to agree upon the divisions of such joint rates, and if they can not so agree they should present the question of divisions to the Commission in a supplementary proceeding.

88 I. C. C.

No. 6441.
ADAMS STAVE COMPANY
v.
TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY
ET AL.

Submitted April 26, 1915. Decided November 11, 1915.

Rates charged for the transportation of gum and oak staves from Broken Bow, Okla., to Fresno and San Francisco, Cal., found unreasonable to the extent that they exceeded the rates contemporaneously applicable from Valliant, Okla. Rates charged from Broken Bow to various other points in the United States found unreasonable to the extent that they exceeded by more than 2 cents per 100 pounds the rates contemporaneously applicable from Valliant to the same destinations. Reparation awarded.

G. F. Thomas for complainant.

J. L. Kirkpatrick for Texas, Oklahoma & Eastern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with a stave plant at Broken Bow, Okla. By complaint filed December 22, 1913, it alleges that the rates charged by defendants for the transportation of gum and oak staves from Broken Bow to various destination points in other states, between January 3, 1912, and September 13, 1913, were unreasonable and unjustly discriminatory to the extent that they exceeded the rates on staves from Valliant, Okla., to the same destinations. Complainant stated at the hearing that rates 2 cents per 100 pounds higher than the rates applicable from Valliant, except on shipments to California points, would be satisfactory. Reparation is asked on all shipments specified in the complaint and on shipments made since the filing of the complaint up to the date of our order herein. A corrected list of shipments on which reparation is claimed was filed at the hearing.

Broken Bow is the terminus of the Texas, Oklahoma & Eastern Railroad and is 24 miles from Valliant, the junction of the Texas, Oklahoma & Eastern with the St. Louis & San Francisco Railroad, hereinafter called the Frisco. The Texas, Oklahoma & Eastern bore the defense and will be referred to herein as defendant. Defendant had no through rates in effect on staves in carloads from Broken Bow

when complainant commenced business at that point in November, 1911. Charges were assessed accordingly at the through rates applicable from Valliant plus 6 cents per 100 pounds, the local rate Broken Bow to Valliant. On some of the shipments the 6-cent local was both prepaid and collected at destination. Such shipments were overcharged 6 cents per 100 pounds. Defendant intended from the outset to join in through rates with the interested carriers that should be 2 cents per 100 pounds higher than the rates from Valliant, but in deference to the Frisco, and because of the pending *Tap Line Case*, 23 I. C. C., 277; 23 I. C. C., 549; 31 I. C. C., 490, refrained from joining in such rates until June 1, 1912, and dates thereafter when rates from Broken Bow 2 cents higher than from Valliant were established to points other than California points. Rates to California points the same from Broken Bow as from Valliant were established August 14, 1913. Defendant intervened in *The Tap Line Case*, *supra*, but neither its status as a common carrier nor the joint rates here in question were directly affected by any orders therein. Defendant has continued its concurrence in the joint rates since their initial establishment. Through some misunderstanding between the Frisco and the Chicago & Eastern Illinois Railroad the latter published the same rates to certain Ohio River, central freight association, eastern, and western destinations from Broken Bow as from Valliant in its tariff I. C. C. No. 2596 as amended, effective July 6, 1912. This situation continued until January 25, 1913, when the rates from Broken Bow were made 2 cents higher than the rates from Valliant. Through further misunderstanding the rates from Broken Bow were again reduced by the Chicago & Eastern Illinois to the Valliant basis November 26, 1913, and continued on that basis until March 20, 1915, when they were again increased to 2 cents over Valliant. Any of complainant's shipments that moved to any points covered by the tariff described during the periods when the rates from Valliant applied from Broken Bow that were charged for at rates in excess of the rates from Valliant were overcharged.

Defendant admits that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously applicable from Valliant to the points involved, except California points, by more than 2 cents per 100 pounds. The rates assailed to California points admittedly were unreasonable to the extent they exceeded the rates from Valliant. Defendant never intended to charge more on staves from Broken Bow to California points than from Valliant. Defendant is willing to join the other carriers defendant in making reparation.

Upon all of the facts of record we find that the rates charged on complainant's shipments to Fresno and San Francisco, Cal., were

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unreasonable to the extent that they exceeded the rates contemporaneously maintained from Valliant and that the rates charged to the other destinations involved were unreasonable to the extent that they exceeded by more than 2 cents per 100 pounds the rate contemporaneously applicable from Valliant to the same destinations. We further find that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the amount of such unreasonable charges together with the straight overcharges described, with interest from the date the charges were paid. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, car number and initials, route, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider further issuing an order awarding reparation. As rates no higher than those herein found reasonable have been in effect for more than two years, no order for the future is necessary.

88 L. O. C.

No. 6770.
WESTON DODSON & COMPANY, INCORPORATED, ET AL.
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted March 6, 1915. Decided March 1, 1916.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal from Beaver Brook colliery and Coleraine colliery, in the Lehigh anthracite coal region in Pennsylvania, to Elizabethport, N. J., for transshipment.

R. D. Jenks and W. A. Glasgow, jr., for complainants.
J. E. Reynolds for defendant.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

Complainants, Weston Dodson & Company, a corporation, and Charles M. Dodson & Company, a partnership, composed of Charles M. Dodson, the estate of Weston Dodson, deceased, the estate of T. M. Dodson, deceased, the estate of Samuel Adams, deceased, Frank C. Stout, E. L. Bullock, and A. S. Schopp, filed their complaint herein March 28, 1914, in which it is alleged that rates charged by the defendant for the transportation of anthracite coal from the Beaver Brook Colliery and from other collieries in the Lehigh anthracite coal region of Pennsylvania to tidewater at Elizabethport, N. J., for reshipment by water, were unreasonable and unjustly discriminatory, and reparation is asked on shipments moving within two years prior to the date of filing the complaint.

The rates herein stated apply for gross or long ton of 2,240 pounds. The rates paid by complainants which are the subject of this complaint are:

On prepared sizes.....	\$1. 55
On pea.....	1. 40
On buckwheat No. 1.....	1. 20
On buckwheat Nos. 2 and 3 and smaller sizes.....	1. 10

Complainants sell coal in direct competition with other operators and dealers who mine or buy from mines in the same general region.

In *Meeker & Co. v. Lehigh Valley R. R. Co.*, 21 I. C. C., 129, the Commission prescribed rates over the line of the Lehigh Valley Railroad Company from the Stevens Colliery to tidewater at Perth

Amboy, N. J., for reshipment by water, of \$1.40 on prepared sizes, \$1.30 on pea, and \$1.15 on buckwheat. The distance from the Beaver Brook Colliery to Elizabethport is 140.5 miles and from Coleraine slightly greater. The distance, for which the rates in the *Meeker case, supra*, were prescribed, is 164 miles. The lines of the defendant and the Lehigh Valley are but a short distance apart and extend in the same general direction.

The Lehigh Valley and other roads in the territory from which complainants ship maintain lower rates for the same or longer distances than the rates of defendant. The earnings of the defendant from the rates complained of, assuming an average loading per car of 39 tons, are 43 cents per car-mile on prepared sizes, 39 cents on pea sizes, 33.3 cents on buckwheat No. 1, and 30.7 cents on smaller sizes. By stipulation testimony in the anthracite investigation relating to the cost of moving coal from the mines to tidewater was made a part of this record. This shows that the average operating cost per gross ton to the defendant for transporting coal from the Lehigh region was 44.35 cents. In *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, 37 I. C. C., 460, and *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, 264, it was found that these cost figures were substantially accurate.

This defendant insists that the rights of complainants should not be differentiated from those involved in *Rates for Transportation of Anthracite Coal, supra*. In that case the Commission prescribed, from a group which includes the points from which complainants ship, rates to Elizabethport when consigned free on board vessels or for reshipment by water as follows:

Prepared sizes.....	\$1. 45
Pea size and smaller.....	1. 35

Complainants filed herein exhibits giving details of shipments and dates when the charges under the existing rates were paid. These exhibits the defendant was given the right to check and their accuracy has not been questioned. Upon the record herein we find:

(1) That during the period from May 31, 1912, to July 31, 1914, inclusive, complainants Charles M. Dodson & Company made certain carload shipments of anthracite coal from Beaver Brook colliery and Coleraine colliery to Elizabethport, N. J., for transshipment by water.

(2) That such shipments aggregated 47,342.27 gross tons prepared sizes and 1,119.01 gross tons pea size.

(3) That complainants Charles M. Dodson & Company paid and bore thereon the established tariff rates of \$1.55 on prepared sizes and \$1.40 on pea size.

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(4) That said rates so paid were excessive and unreasonable to the extent that they exceeded \$1.45 on prepared sizes and \$1.35 on pea size, which latter would have been reasonable rates for the service.

(5) That complainants Charles M. Dodson & Company were injured and damaged by the payment of said unreasonable rates to the extent of the difference between the amount paid at the rates herein found unreasonable and the amount it would have paid at the rates herein found reasonable, and that the damages amount to \$4,790.18, together with interest at 6 per cent from September 1, 1913.

(6) That during the period from January 20 to January 31, 1913, inclusive, complainant Weston Dodson & Company made certain carload shipments of anthracite coal from Coleraine colliery, Pa., to Elizabethport, N. J., for transshipment by water.

(7) That such shipments aggregated 228.14 gross tons prepared sizes, upon which said complainant Weston Dodson & Company paid and bore the established tariff rate of \$1.55.

(8) That said rate so paid was excessive and unreasonable to the extent that it exceeded \$1.45, which latter would have been a reasonable rate for the service.

(9) That complainant Weston Dodson & Company was injured and damaged by the payment of said unreasonable rate to the extent of the difference between the amount paid at the rate herein found unreasonable and the amount it would have paid at the rate herein found reasonable, and that the damages amount to \$22.81, together with interest at 6 per cent from February 27, 1913.

Upon these findings we conclude that an order should be issued authorizing and directing defendant to pay to complainants the amount of the damages by them respectively sustained, together with interest thereon. An order will issue accordingly.

Upon this record we are unable to find that the rates complained of on sizes smaller than pea are unreasonable. As the rates herein found reasonable have been ordered to be published and to be maintained as maximum for the future in *Rates for Transportation of Anthracite Coal, supra*, no order as to the maintenance for the future of the rates herein found reasonable need be made in this case.

88 I. C. C.

No. 7171.¹
MERCHANTS PRODUCE COMPANY
v.
**OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY ET AL.**

Submitted April 27, 1915. Decided February 8, 1916.

Reparation awarded on account of unreasonable charges collected for the transportation of a carload of cabbage from Placentia, Cal., a carload of cabbage from Colma, Cal., and a carload of melons from Monson, Cal., to Spokane, Wash.

R. J. Knott for complainants.

A. W. Hawkins for Southern Pacific Company and Oregon-Washington Railroad & Navigation Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The complainant in No. 7171 and No. 7171 (Sub-No. 2) was a corporation engaged in the produce business at Spokane, Wash. The complainant in No. 7171 (Sub-No. 1) was and is a corporation engaged in the same business at the same place. By complaints filed August 10, 1914, they allege that the rates charged by the defendants for the transportation of certain carloads of fresh vegetables to Spokane from various points in California during the period from March to July, 1912, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of reasonable rates for the future. The claim involved in No. 7171 was presented to the Commission informally March 26, 1914; the claims involved in No. 7171 (Sub-Nos. 1 and 2), October 13, 1913.

The complaint in No. 7171 involves a carload of cabbage moved from Placentia, Cal., to Spokane, on April 19, 1912, by the Atchison, Topeka & Santa Fe Railway to Stockton, Cal., by the Southern Pacific Company to Portland, Oreg., and by the Oregon-Washington Railroad & Navigation Company beyond. Freight charges were collected in the sum of \$250.80 on 27,560 pounds, at a rate of 91 cents per 100 pounds. Complainant contends that the charges collected were unreasonable and unjustly discriminatory to the extent

¹ The proceeding also embraces complaints in—No. 7171 (Sub-No. 1), *Ryan & Newton Company v. Same*; and No. 7171 (Sub-No. 2), *Merchants Produce Company v. Same*.

that they exceeded those that would have accrued at a rate of 75 cents per 100 pounds which applied from Placentia to Butte, Mont., to which point Spokane is directly intermediate.

We found in *Ryan & Newton Co. v. O. W. R. R. & N. Co.*, Docket No. 6753, unreported, that a reasonable rate on cabbage in carloads from Brookhurst and Stanton, Cal., to Spokane should not exceed 75 cents per 100 pounds. Brookhurst and Stanton are in the general vicinity of Placentia and about the same distance from Spokane. The 75-cent rate cited from Placentia to Butte is still in effect, and, effective November 4, 1912, defendants established the same rate to Spokane, which rate also is still in effect. The previous departure from the long-and-short-haul rule of the fourth section was protected by Fourth Section Application No. 1396, which has not yet been heard. Defendants admit that the rate charged was unreasonable and express willingness to make reparation on the basis sought.

We find that the rate charged was unreasonable to the extent that it exceeded 75 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$44.10, with interest from May 3, 1912. An appropriate order will be entered, but as the rate herein found reasonable has been in effect for more than two years, no order will be entered for the future.

The complaint in No. 7171 (Sub-No. 1) involves two shipments: A carload shipment of cabbage from Colma, Cal., to Spokane, on March 12, 1912, moved by the Southern Pacific to Portland and by the Oregon-Washington Railroad & Navigation Company beyond; a carload shipment of melons moved July 12, 1912, from Monson, Cal., to Spokane, by the Southern Pacific to Portland and the Oregon-Washington Railroad & Navigation Company beyond. Freight charges were collected on the first shipment in the sum of \$136.80 on 22,800 pounds, at a commodity rate of 60 cents per 100 pounds, and in the sum of \$226.73 on 28,700 pounds, at a commodity rate of 79 cents per 100 pounds on the other.

Complainant shows that cabbage and melons are rated class C in the western classification, which governs shipments from and to the points of origin and destination involved, and insists that a reasonable rate on the shipment from Colma should not have exceeded a combination rate of 46 cents per 100 pounds, composed of the proportional class C rate of 16 cents of the Southern Pacific from Colma to Portland, and the local class C rate of 30 cents of the Oregon-Washington Railroad & Navigation Company beyond; and a com-

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bination rate of 61 cents per 100 pounds on the shipment from Monson, composed of the local class C rate of 15 cents of the Southern Pacific from Monson to Lathrop, Cal., the proportional class C rate of 16 cents of the Southern Pacific thence to Portland, and the local class C rate of 30 cents of the Oregon-Washington Railroad & Navigation Company beyond. Defendants insist that the rates assailed were not intrinsically unreasonable. They show that the Southern Pacific's 16-cent proportional rate was a water competitive rate, established from San Francisco and extended as far as Colma and Monson. Fresh vegetables do not move by water from points in California to Portland, and it was specifically provided in the tariff naming the proportional class rates from San Francisco, Colma, and Monson to Portland that they would not apply on these commodities. Defendants insist, and complainant admits, that these rates were abnormally low. Complainant shows, however, that perishable freight other than fresh vegetables, principally packing-house products, are accorded a rate of 16 cents from Colma and Lathrop to Portland. But the only packing-house products that move on this rate are smoked meats in packages.

The local class C rate of the Southern Pacific from Colma and Lathrop to Portland was 28 cents per 100 pounds, which, added to the class C rate of 30 cents from Portland to Spokane, made a through rate of 58 cents from Colma to Spokane, and added to the class C rate of 15 cents from Monson to Lathrop and the class C rate of 30 cents from Portland to Spokane made a through rate of 73 cents from Monson to Spokane. On November 4, 1912, defendants established a joint through carload rate of 58 cents on cabbage to Spokane from Colma, and a rate of 73 cents on melons from Monson, which rates are still in effect. The former departure from the rules of the fourth section was protected by Fourth Section Application No. 1397, which has not yet been heard.

We find that the rate charged on the shipment from Colma to Spokane was unreasonable to the extent that it exceeded a rate of 58 cents per 100 pounds and that the rate charged on the shipment from Monson to Spokane was unreasonable to the extent that it exceeded a rate of 73 cents per 100 pounds; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$21.78, with interest thereon from July 22, 1912. An appropriate order will be entered, but as the rates herein found reasonable have been in effect for more than two years, no order will be entered for the future.

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The complaint in No. 7171 (Sub-No. 2) involves two carloads of fresh vegetables, including radishes, moved from Drumm street station, San Francisco, to Spokane, on March 22, 1912, and April 2, 1912, respectively, by the Southern Pacific to Portland and by the Oregon-Washington Railroad & Navigation Company beyond. Freight charges were collected on the first shipment in the sum of \$175.61 on 24,390 pounds, at a commodity rate of 72 cents per 100 pounds, applicable to fresh vegetables rated fifth class in the western classification, including radishes. Freight charges were collected on the second shipment in the sum of \$160.27 on 22,260 pounds, at the same rate. The rate charged is still in effect.

Complainant contends that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded a combination rate of 66 cents per 100 pounds, composed of the proportional fifth-class rate of 16 cents of the Southern Pacific from San Francisco to Portland and the local fifth-class rate of 50 cents of the Oregon-Washington Railroad & Navigation Company beyond. But, as stated before, the proportional rates, including the fifth-class rate of 16 cents, did not apply on fresh vegetables. The issues are identical with those presented in No. 7171 (Sub-No. 1), and the testimony offered in that case applies also to this.

The local fifth-class rate of the Southern Pacific from San Francisco to Portland was and is 28 cents per 100 pounds, which, added to the Oregon-Washington Railroad & Navigation Company's fifth-class rate of 50 cents thence to Spokane, made a through rate of 78 cents, 6 cents higher than the rate assailed.

We find the rate assailed was not unreasonable or unjustly discriminatory, and the complaint will be dismissed.

88 I. C. C.

No. 7410.
I. GILMAN & COMPANY
v.
MAINE CENTRAL RAILROAD COMPANY ET AL

FOURTH SECTION APPLICATION No. 555.

Submitted May 3, 1915. Decided February 15, 1916.

Reparation awarded on account of charges found to have been collected in excess of tariff rate legally applicable for the transportation of certain carloads of news print paper and of wrapping paper from Woodland, Me., to pier 50, New York, N. Y.

E. H. Ferguson and A. M. Becker for complainant.

C. H. Blatchford and L. Snow, jr., for Maine Central Railroad Company.

S. S. Perry for Boston & Maine Railroad and New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant, Isaac Gilman, is a wholesale paper dealer, doing business under the name of I. Gilman & Company, with his principal place of business at New York, N. Y. By complaint, filed October 7, 1914, he alleges that defendants collected unreasonable and unduly discriminatory and prejudicial charges for the transportation of certain carloads of news print paper and of wrapping paper, during September, October, and November, 1909, from Woodland, Me., to pier 50, New York. Reparation is asked in the sum of \$1,096.18. The claim was presented to the Commission informally August 30, 1911.

The New York rail terminus of the New York, New Haven & Hartford Railroad is Harlem River station. Pier 50 is a terminal of this carrier, but is not on its rails, traffic being conveyed to pier 50 from Harlem River station by lighters. During the period mentioned, defendants' rate to pier 50 on the commodities mentioned, including the lighterage charge, was 17 cents per 100 pounds, defendants' tariffs also providing for certain hold-over privileges at Harlem River station on news print paper. The rate contemporaneously maintained to Harlem River station was 19 cents per 100 pounds. The local rate from Harlem River station to pier 50 was 6 cents per 100

pounds. Charges were collected on the shipments at the 19-cent rate to Harlem River and the local rate of 6 cents beyond. The shipments were intended for pier 50 delivery, but were billed, "Harlem River terminal, lighterage free," complainant seeking to obtain the hold-over privileges at Harlem River station.

Effective January 6, 1912, the rate to Harlem River station was made the same as the rate to pier 50, 17 cents per 100 pounds, and this rate has since been maintained to both terminals. Under a tariff of the New York, New Haven & Hartford Railroad, in effect when the shipments moved, a rate of 3 cents per 100 pounds was available on carload traffic, reconsigned from Harlem River station to pier 50, restricted, however, to shipments which had been refused by the original consignee. Tariffs effective on subsequent dates provided the same reconsigning rate but without this restriction. Defendants admit that the charges collected on complainant's shipments were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 17 cents to Harlem River station plus 3 cents for the forwarding movement thence to pier 50. They insist, however, that as the shipments were not billed to pier 50, they were not entitled to the application of the 17-cent rate.

We can not accept defendants' contention. The billing clearly indicated that the Harlem River terminal was not the ultimate destination of the shipment. The form of billing employed is not uncommon on shipments intended for delivery at points within the free lighterage limits of New York harbor and is stated by complainant to have been generally employed in its previous billing over the lines of other carriers.

We find that the 17-cent rate applicable to pier 50 should have been applied to the shipments in question; that complainant made the shipments as described and paid and bore charges thereon which were in excess of the tariff rate legally applicable; that he has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate legally applicable; and that he is entitled to reparation with interest.

Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, point of origin and destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider entering an order awarding reparation.

Demurrage charges were assessed on certain of the cars involved while held at Harlem River station. No such charges should have

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been imposed on the cars of news print paper unless they were held beyond the time allowed by the tariff granting the hold-over privileges. As the tariffs then in effect did not provide such privileges on wrapping paper, and as the record affords no basis for a finding that demurrage charges imposed on shipments of this commodity were unreasonable, the amount of such charges paid, if any, is not recoverable.

The maintenance by defendants of rates from Woodland to Harlem River station, an intermediate point, higher than to pier 50, contravened the long-and-short-haul rule of the fourth section, but was protected by the Maine Central Railroad Company's Fourth Section Application No. 555, which to that extent was set for hearing with the complaint. No justification was offered for the continuance of the adjustment, which, as stated above, has since been corrected.

88 L. C. C.

No. 7491.

BURREL COLLINS ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted August 27, 1915. Decided February 15, 1916,

Chicago, Burlington & Quincy Railroad Company found to have misrouted two carloads of peaches transported from Craft and Henderson, Tex., to Holdrege, Nebr. Reparation awarded.

J. P. Duffy for complainants.

F. Montmorency for Chicago, Burlington & Quincy Railroad Company and International & Great Northern Railway Company.

J. M. Souby and *F. H. Moore* for Kansas City Southern Railway Company and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Burrel Collins and Simeon B. Collins, co-partners, engaged in the brokerage business at Kansas City, Mo., under the firm name of Burrel Collins Brokerage Company. By complaint, filed November 18, 1914, they allege that defendants collected unreasonable charges for the transportation of two carloads of peaches shipped July 19, 1910, from Craft and Henderson, Tex., respectively, to Emporia, Kans., and Kansas City, respectively, and subsequently reconsigned to Holdrege, Nebr. Reparation is asked. The claim was presented to the Commission informally July 5, 1912.

The shipment which originated at Craft was billed to Emporia, and was diverted in transit at Fort Worth, Tex., to Holdrege. It was moved by the St. Louis Southwestern Railway Company of Texas to Big Sandy, Tex., by the Texas & Pacific Railway to Fort Worth, Tex., by the Atchison, Topeka & Santa Fe system to Atchison, Kans., and by the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, to Holdrege. Charges were collected in the aggregate sum of \$264, at a minimum weight of 20,000 pounds, at a local rate of 50 cents per 100 pounds from Craft to Atchison and a rate of 52 cents from Atchison to Holdrege, plus a refrigeration charge of 30 cents per 100 pounds. The shipment that originated at Henderson was billed to Kansas City and reconsigned there to Holdrege. The route of movement was: International & Great Northern Railway to Longview Junction, Tex.; Texas & Pacific Railway to Texarkana, Tex.; Kansas City Southern Railway to

Kansas City; Burlington to Holdrege. Charges were collected in the aggregate sum of \$259.60, at a minimum weight of 20,000 pounds and local rates of 55 cents to Lincoln, Nebr., and 48 cents to Holdrege, plus a refrigeration charge of 30 cents per 100 pounds. The lawful charges on this basis were \$266. The reconsignments were effected under appropriate tariff authority. The shipments moved beyond Kansas City and Atchison over the Burlington's line through Table Rock, Tecumseh, and Lincoln, Nebr. No routing instructions were given, and complainants contend that the shipments were misrouted north of Kansas City and Atchison. The refrigeration charges applied are not assailed.

The western classification rates peaches third class. A joint rate of 50 cents applied from the points of origin to Kansas City and Atchison; and a joint rate of 55 cents to Tecumseh, Beatrice, Brownville, and Lincoln, Nebr. The third-class rates to Holdrege were 44 cents from Beatrice; 48 cents from Lincoln. The Burlington tariff provided an interstate rate on peaches from any point in Nebraska to any other point in Nebraska of 85 per cent of the class rate. A commodity rate of 29.75 cents, minimum weight 24,000 pounds, was applicable from Brownville to Holdrege. Defendant states that Brownville was not considered as a basing point and that this rate was published several years ago to enable growers of peaches in that vicinity to market their product, as their peaches were not of very high quality. Holdrege is 335 miles from Kansas City by way of Beatrice; 349 miles by way of Lincoln; 366 miles by way of Brownville. The shipments moved from Kansas City and Atchison over the main line used for fast freight. Brownville is a local station on a branch line of the Burlington, and defendants contend that the service by way of Brownville is a branch-line service which would have delayed the shipments at least 24 hours, but complainants submit that the delay would not have been detrimental, as the peaches were refrigerated. Effective February 1, 1915, the 85 per cent basis was canceled, thereby leaving the class rates in effect. Effective February 15, 1915, the commodity rate from Brownville was canceled.

We find that complainants made the shipments as described; that the Burlington misrouted the shipments; that complainants paid and bore the charges imposed; that they were damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis of the rates to and from Brownville; and that they are entitled to reparation in the sum of \$40.80 with interest from July 21, 1910. The undercharge of \$6.40 found outstanding on the shipment which originated at Henderson may be waived.

An appropriate order will be entered.

38 I. C. C.

No. 7804.
E. RICKARDS
v.
SEABOARD AIR LINE RAILWAY.

Submitted June 14, 1915. Decided February 15, 1916.

Rates for the transportation of mine-prop logs in carloads from Thelma and Vaughan, N. C., to Portsmouth, Va., found to have been unreasonable and unjustly discriminatory. Reasonable and nondiscriminatory rates prescribed for the future.

C. W. Owen and G. C. Shinn for complainant.

R. Walton Moore and Willis H. Fowle for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in buying and selling logs at Norfolk, Va. By complaint filed March 4, 1915, he alleges that the rates charged by defendant for the transportation of pine mine-prop logs, in carloads, from Hugo, Fosburgh, Thelma, and Vaughan, N. C., to Portsmouth, Va., are unreasonable and unjustly discriminatory. Reasonable and nondiscriminatory rates are asked for the future.

No mine-prop logs or saw logs move now from Hugo and Fosburgh and these stations have been abandoned, apparently without objection by complainants. Therefore the rates from these points will not be discussed.

Carload rates from Thelma to Portsmouth, 91 miles, are: 4 cents per 100 pounds on pine mine-prop logs of any length; \$3 per 1,000 feet on pine saw logs 16 feet long, and 7 cents per 100 pounds on pine saw logs of other lengths. These rates yield 8.8 mills, 4.7 mills, and 15.4 mills per ton-mile, respectively. The rates from Vaughan to Portsmouth, 104 miles, are: 5 cents per 100 pounds on pine mine-prop logs, \$3 per 1,000 feet on pine saw logs not less than 10 feet and not more than 17 feet long, and 7 cents per 100 pounds on pine saw logs of other lengths. These rates yield 9.6 mills, 4.1 mills, and 13.4 mills per ton-mile, respectively.

The average weight of 1,000 feet of saw logs is 14,000 pounds, and the rate of \$3 per 1,000 feet is equivalent to 2.1 cents per 100 pounds. The average carload shipment contains from 3,700 feet to 4,000 feet. Pine mine-prop logs generally are cut into lengths ranging from 24 feet to 29 feet, while pine saw logs generally are shorter. But pine mine-prop logs and pine saw logs obviously are cut from the same

timber, weigh the same per 1,000 feet, are measured in the same manner, are of substantially the same value at points of origin, and alike are shipped on flat or gondola cars. Longer mine-prop logs can be loaded more securely than the shorter length mill logs.

Defendant states that the saw logs originate in trainloads on logging roads connecting with defendant's main line at Thelma and Vaughan, while mine props are received in single carload lots from points on the main line; and, further, that the rates on pine saw logs are unduly low, having been established originally by defendant to induce the logging roads operating between defendant's lines and the lines of the Atlantic Coast Line to connect with defendant's line at Thelma and Vaughan in preference to points on the Atlantic Coast Line. However, these rates have been in effect for a number of years, and presumably are remunerative. Defendant cites other rates in comparison, but without the necessary showing of substantial similarity in conditions.

Rates on mine-prop logs as compared with rates on saw logs and mill logs from points in North Carolina to Norfolk and Berkley were involved in *Rickards v. A. C. L. R. R. Co.*, 23 I. C. C., 239, and in Docket No. 5783, unreported, *Rickards v. N. S. R. R. Co.* The defense interposed was substantially the same as the defense interposed here. We held that the rates on mine-prop logs should not exceed the rates contemporaneously applied to saw logs and mill logs.

Numerous rates and minima apply from Vaughan and Thelma to Portsmouth on various kinds of logs. Examples are: Mine props, minimum 40,000 pounds, 4 cents per 100 pounds; forest products, including logs, excepting cedar, cherry, and walnut, minimum 34,000 pounds, 7 cents per 100 pounds; gum logs, not over 6 feet in length, minimum 40,000 pounds, 4.5 cents per 100 pounds; gum logs, over 6 feet in length, minimum 50,000 pounds, 4.5 cents per 100 pounds; excelsior material, viz, small pine and poplar logs, minimum 40,000 pounds, 4.5 cents per 100 pounds. The application of the rate of \$3 per 1,000 feet, minimum 3,500 feet, board measure, previously cited, on pine saw logs in 16-foot lengths only, while the same rate from Vaughan to Portsmouth applies on straight carloads of pine saw logs or on mixed carloads containing not over 10 per cent of gum and (or) poplar logs, measuring not less than 10 feet and not more than 17 feet in length, therefore is only a part of the general confusion, and it is not surprising that complainant has several times assailed the rates on mine props to Norfolk from the territory immediately south of Norfolk both as unreasonable and unjustly discriminatory. The question, for example, whether a pine log is a mine prop, a forest product, a saw log, or excelsior material would puzzle even the most expert. The manner in which the rates are published invites manipulation and misbilling, and an immediate revision of

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them is necessary. At present they reflect the uses to which the logs rated are put, which, of course, is illegal.

We find that defendant's rates on pine mine-prop logs in carloads from Thelma and Vaughan to Portsmouth are, and for the future will be, intrinsically unreasonable to the extent that they exceed 3.5 cents per 100 pounds from Thelma and 4 cents from Vaughan. We are not convinced that the circumstances and conditions surrounding the transportation of pine mine props are sufficiently dissimilar to justify rates from Thelma and Vaughan to Portsmouth higher than those contemporaneously maintained on pine saw logs from the same points of origin to Portsmouth, but further find that the present rates on mine-prop logs from and to the points here involved are unjustly discriminatory, and we shall require defendant to establish rates for the future which shall not exceed the rates contemporaneously applied on saw logs.

33 I. C. C.

No. 7849.

MUTUAL OIL COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted September 2, 1915. Decided February 15, 1916.

Rates for the transportation of petroleum and certain of its products in carloads from Cowley, Wyo., to Highwood and Coffee Creek, Mont., found to have been unreasonable. Reasonable rates prescribed for the future and reparation awarded.

T. J. McCormick and O. H. Williams for complainant.

R. B. Scott, K. F. Burgess, O. W. Dynes, and J. N. Davis for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in petroleum and its products, with its principal office at Kansas City, Mo. By complaint, filed March 24, 1915, it alleges that defendants' carload rates on petroleum oil and certain of its products, from Cowley, Wyo., to Highwood and Coffee Creek, Mont., are unreasonable and unjustly discriminatory. Reparation is asked.

Cowley is on the line of the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, in northern Wyoming. Highwood and Coffee Creek are on a branch line of the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, between Great Falls and Lewistown, Mont. The shipments on which reparation is asked consisted of eight carloads of refined petroleum oil and moved during the year 1914 over the Burlington to Great Northern Junction, Mont., thence over Great Northern to Great Falls or Lewistown, and thence over the Milwaukee. No joint through rates were in effect, and charges were collected in the sum of \$1,558.58 on four shipments to Highwood that aggregated 213,504 pounds, at a combination rate of 73 cents per 100 pounds, composed of a commodity rate of 60 cents from Cowley to Great Falls, Mont., and the fifth-class rate of 13 cents beyond; and in the sum of \$1,579.52 on four shipments to Coffee Creek that aggregated 213,450 pounds, at a combination rate of 74 cents, composed of a commodity rate of 60 cents from Cowley to Lewistown, Mont., and the fifth-class rate of 14 cents beyond. These rates are still in effect and apply on various light petroleum oils, viz,

gasoline, kerosene, naphtha, and distillate. The rates assailed, applicable on heavier petroleum oils, viz, crude, smudge, gas, road, and fuel oil, are 43 cents to Highwood and 55 cents to Coffee Creek, composed of a joint commodity rate of 30 cents to Great Falls and the local fifth-class rates of the Milwaukee beyond. No shipments of the heavier oils have been made by complainant from and to the points involved. In *Board of Railroad Commissioners of Montana v. C., B. & Q. R. R. Co.*, Docket 5448, unreported, decided June 4, 1914, we found that the combination rates on petroleum and its products from Cowley to certain points on the Milwaukee in Montana were unreasonable and unduly prejudicial to the extent that they exceeded rates 10 cents per 100 pounds less than the joint rates contemporaneously in effect to the same stations from Casper, Wyo., which is 245 miles south of Cowley. As a result of our decision in that case the rate from Cowley to Baker, Mont., on the Milwaukee road, 335 miles from Cowley, was reduced from 86 cents to 60 cents. Similar reductions were made in rates to other points.

Complainant contends that the present rates on the light petroleum oils to Highwood and Coffee Creek should not exceed 50 cents, and that the rate on the heavier oils should not exceed 25 cents. The rates on light oils are compared with rates on light oils from and to other points, in part, as follows:

Petroleum and its products.

From—	Dis- tance.	Rate.	Ton-mile earnings.	Car-mile earnings.
	Miles.	Cents.	Cents.	Cents.
Cowley to Highwood.....	322	73	4.55	121.0
Cowley to Coffee Creek.....	256	74	5.78	153.7
Casper to Denver, Colo.....	342	37	2.16	57.5
Casper to Deadwood, S. Dak.....	459	25	1.53	40.7
Boulder, Colo., to Douglas, Wyo.....	257	38	2.95	78.5
Florence, Colo., to Raton, N. Mex.....	256	35	2.73	72.6
Salt Lake City, Utah, to Cumberland, Wyo.....	311	35	2.25	59.9
Salt Lake City, Utah, to Diamondville, Wyo.....	300	25	2.33	62.0
Salt Lake City, Utah, to Boise, Idaho.....	436	50	2.29	60.9
Spring Valley, Wyo., to Pocatello, Idaho.....	229	32	2.80	74.0
California points to Phoenix, Ariz.....	535	50	1.87	49.7

The comparison shows that the rates on the light oils from and to the points involved are 100 per cent greater in some instances than the rates cited in comparison for similar distances.

Complainant also cites rates on the same oils from Kansas City, Mo., and Tulsa, Okla., to Omaha, Nebr., and Des Moines and Davenport, Iowa, but these comparisons are of no substantial value, as the traffic between the points last named moves under dissimilar circumstances.

The earnings on the light petroleum oils as shown by the above table are 4.55 cents per ton-mile from Cowley to Highwood and 5.78

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cents to Coffee Creek. The Burlington's average earnings per ton-mile on all traffic for the year ended June 30, 1914, was 0.729 cents; the Great Northern's, 0.794 cents; the Milwaukee's, 0.808 cents. The ton-mile earnings of the Milwaukee on Montana state traffic for the same period were 1.194 cents; the earnings of the Great Northern Railway, 0.939 cents. The Burlington's earnings on similar traffic are not in evidence.

The record shows that the rates on the heavier oils between points in the same general territory are much lower than the rates from Cowley to the points involved. Illustrative rates on the heavier oils are: 30 cents per 100 pounds from Casper to Denver, 342 miles; 25 cents to Deadwood, S. Dak., 459 miles; 40 cents to Sheridan, Wyo., 472 miles.

Defendants offered no evidence.

We are of opinion and find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded and exceed 60 cents per 100 pounds on the light petroleum oils above referred to and 30 cents per 100 pounds on the heavy petroleum oils above referred to from Cowley to Highwood and Coffee Creek. We further find that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found unreasonable; that it was damaged to the extent that the charges paid exceeded the charges which would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest.

Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of delivery, points of origin, destination, weight, route, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further the entry of an order awarding reparation.

An order will be entered at this time requiring the establishment and maintenance of the rates herein found reasonable.

HALL, *Commissioner*, dissents.

381 C. C.

No. 7851.
MILLER ELEVATOR COMPANY
v.
FAIRMOUNT & VEBLEN RAILWAY COMPANY ET AL.

Submitted September 8, 1915. Decided February 15, 1916.

Charges collected for the transportation of seven carloads of grain from Rosholt, S. Dak., to Duluth, Minn., in September and October, 1913, not shown to have been unreasonable. Complaint dismissed.

Harry Rauch for complainant.

A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaint filed March 25, 1915, alleges that complainant is a corporation engaged in buying and selling grain and farm products, with its principal office at Minneapolis, Minn., and that the rate of 17½ cents per 100 pounds charged by defendants for the transportation of seven carloads of grain from Rosholt, S. Dak., to Duluth, Minn., in September and October, 1913, was unreasonable and unjustly discriminatory to the extent it exceeded a rate of 12 cents per 100 pounds applicable on like traffic from Hankinson, Oswald, Sonora, and Blackmer, N. Dak., to Duluth. Reparation is asked.

Rosholt is located 18 miles south of Fairmount, S. Dak., on the Fairmount & Veblen Railway, which extends from Fairmount, where it connects with the Minneapolis, St. Paul & Sault Ste. Marie Railway, to Greenville, S. Dak., 87 miles. No joint rate applied to Duluth when the shipments moved, and the 17½-cent rate charged was a combination rate, composed of a rate of 6 cents to Fairmount and a rate of 11½ cents beyond. A rate of 6 cents per 100 pounds on grain from Rosholt to Fairmount was named in the first tariffs published by the Fairmount & Veblen, which took effect September 5, 1913. On October 7, 1913, two days after complainant's last shipment moved, a joint rate of 12 cents per 100 pounds was established from Rosholt to Duluth. The Fairmount & Veblen is now a part of the Minneapolis, St. Paul & Sault Ste. Marie and a joint rate of 12½ cents per 100 pounds is in effect, which is not assailed.

Hankinson is located on the Great Northern and the Minneapolis, St. Paul & Sault Ste. Marie railroads; Oswald on the Minneapolis,

St. Paul & Sault Ste. Marie; Sonora on the Great Northern; and Blackmer on the Chicago, Milwaukee & St. Paul Railway. None of these points is served by the Fairmount & Veblen and only one of them is a competitive point. The comparisons made with the rates from these points therefore are not convincing.

Defendants contest our jurisdiction over rates applicable over an uncompleted road not open for general traffic. But it appears that the Fairmount & Veblen filed a construction tariff with the Commission which carried the rate involved.

Defendants show that the 6-cent rate to Fairmount was published in order to relieve shippers in the locality of Rosholt from the inconvenience of hauling their shipments by wagon 11 miles to the nearest railroad in operation. Only one or two cars could be handled at a time, and trains, which were usually loaded to their capacity with construction material, could not be run regularly.

The line was opened for traffic early in October, 1913, several days after complainant's last shipment moved. The rate assailed was maintained for only 30 days, while the road was under construction, and a joint rate of 12 cents per 100 pounds was established as soon as the road began operation.

During the period of construction the rate here assailed was established as an accommodation, and we are of opinion that it has not been shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed.

No. 8130.

FRANK W. HUNT & COMPANY

v.

A. H. BULL STEAMSHIP COMPANY ET AL.

Submitted September 17, 1915. Decided February 15, 1916.

Reparation awarded on account of the exaction of a combination rate on certain shipments of dry hides by water and rail from New York, N. Y., to Island Falls, Me., in October, 1913, found to have been unreasonable and excessive.

H. R. Chase for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Frank W. Hunt, is engaged in the manufacture of leather under the trade name of Frank W. Hunt & Company, with his principal place of business in Boston, Mass., and a tannery at Island Falls, Me. By complaint, filed June 29, 1915, he alleges that the combination rate charged by defendants for the transportation of three carload shipments of dry hides during October, 1913, by water from New York, N. Y., to Cape Jellison, Me., and thence by rail to Island Falls was unreasonable. Reparation is asked.

The shipments aggregated 146,453 pounds, and were moved by defendant A. H. Bull Steamship Company to Cape Jellison and thence by defendant Bangor & Aroostook Railroad Company to destination. After certain errors had been corrected, through charges were collected at destination in the total sum of \$541.88, at the steamship company's proportional fourth-class rate of 22 cents per 100 pounds, applicable from New York to Cape Jellison on traffic for Island Falls, plus the fourth-class rate of 15 cents per 100 pounds of the delivering rail carrier from Cape Jellison to Island Falls. The steamship company had a port to port rate of 9.5 cents from New York to Cape Jellison, and an intrastate rate of 13 cents applied via the rail carrier from Cape Jellison to Island Falls. The shipments were handled by agents of the carriers and forwarded with all charges to be collected at Island Falls, which rendered them through shipments by water and rail, on which only the interstate rates charged were applicable. Immediately after

the shipments had moved, the steamship company published a proportional commodity rate of 9.5 cents per 100 pounds from New York to Cape Jellison, effective December 8, 1913, while the rail carrier established a rate of 13 cents from Cape Jellison to Island Falls, effective November 8, 1913. The steamship company published no commodity rate on hides during the period of movement, but did have a commodity rate of 15 cents per 100 pounds on leather in rolls, any quantity, from New York to Cape Jellison. Its tariff provided proportional rates, on articles classified fourth class, to certain destinations in Maine other than Island Falls, which ranged from 18 cents to 7 cents per 100 pounds. Defendants admit that the rate charged was excessive and unreasonable, and offer in their answers to make reparation on the basis of the rate subsequently established.

We find that the combination rate charged was unreasonable to the extent that it exceeded in the aggregate the through rate of 22.5 cents per 100 pounds subsequently established; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that he was damaged to the extent of the difference between the charges paid and those that would have accrued on the basis of rates herein found reasonable; and that he is entitled to reparation in the sum of \$212.36, with interest thereon from February 20, 1914. An order will be entered accordingly. As the through rate of 22.5 cents has been in effect for about two years, no order will be entered for the future.

38 I. C. C.

No. 6481.

JACOB E. DECKER & SONS

v.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY ET AL.

Submitted August 31, 1914. Decided February 15, 1916.

1. Rates charged for the transportation of packing-house products and fresh meats in straight carloads from Mason City, Iowa, to Arkansas and Texas points not found to be unreasonable or unjustly discriminatory.
2. The rates to Louisiana points found unjustly discriminatory to the extent that they exceed the rates from Chicago and grouped points by more than 2½ cents per 100 pounds on packing-house products and 5 cents per 100 pounds on fresh meats. Reparation denied.

Senneff, Bliss & Witwer for complainant.

H. G. Herbel, F. G. Wright, and Thomas Bond for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Texas & Pacific Railway Company; and St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business at Mason City, Iowa. By complaint, filed January 12, 1914, it alleges that the rates charged by defendants on packing-house products and fresh meats in straight carloads from Mason City to Arkansas, Louisiana, and Texas points are unreasonable and that they unjustly discriminate in favor of certain other Iowa points which are substantially on the Chicago basis of rates to the destinations involved. Reparation is asked.

The following table shows the present rates on packing-house products from Mason City, the rates desired, and rates from other points; all rates are stated in cents per 100 pounds:

From—	To Texas common points.	To Little Rock, Ark.	To Fort Smith, Ark.	To Camden, Ark.	To Lake Charles, La.	To Alex- andria, La.	To Shreve- port, La.
Mason City, Iowa.....	69.5	44.5	46.5	52.5	71.0	65.0	66.5
Mason City, Iowa ¹							
Chicago, Ill.....	67.0	42.0	47.0	50.0	63.0	57.0	58.5
Milwaukee, Wis.....							
Fort Dodge, Iowa.....							
Waterloo, Iowa.....							
Ottumwa, Iowa.....	65.0	39.0	44.0	47.0	60.0	54.0	55.5
Des Moines, Iowa.....	65.0	43.0	46.0	51.0	62.0	56.0	57.5
Cedar Rapids, Iowa.....	65.0	42.0	47.0	50.0	62.0	56.0	57.5
Marshalltown, Iowa.....	67.0	42.0	47.0	50.0	62.0	56.0	57.5
St. Paul, Minn.....	66.5	44.5	49.5	52.5	71.0	65.0	66.5

¹ Rates desired.

Mason City is 205.9 miles northwest of Cedar Rapids over the Chicago, Milwaukee & St. Paul and the St. Paul & Des Moines railroads; 72 miles northeast of Fort Dodge over the Chicago Great Western Railroad; 121 miles north of Des Moines over the St. Paul & Des Moines Railroad.

Complainant is interested principally in the rates on packing-house products, pork products in particular. The hogs slaughtered by complainant are purchased principally in Iowa in competition with other Iowa packing houses and the products are shipped principally to Chicago. Complainant desires rates to the points involved that will enable it to compete more advantageously with other Iowa packers who enjoy substantially Chicago rates to points of destination in the south. Complainant urges that its inbound rates on live stock and such supplies as box lumber, tierces, tubs, salt, and coal are about on a parity with the rates paid by its Iowa competitors, so that the cost of its products is approximately the same, and argues that a similar rate parity should obtain on its outbound products, as its disadvantage in distance is negligible. It asks to have Mason City grouped with Iowa points rather than with St. Paul, with which it does not compete in the purchase of live stock. Packers at other Iowa points have lower rates to Arkansas, Texas, and Louisiana points than complainant has and complainant must shrink its profits in order to compete. Competition from Texas and Oklahoma producing points must also be considered. Mason City, as a point of origin, is on the same basis with other Iowa points on packing-house products to Duluth, while on northbound traffic from some of the Texas common points Mason City, as a destination, is on the Chicago basis, which is higher than applies to other Iowa points. A rate of 36 cents per 100 pounds applies from some of the Texas points to Cedar Rapids, Iowa, while the rate to Mason City and Chicago is 41 cents.

Complainant submits that if the carriers can maintain a rate of 41 cents to Mason City they can maintain the same rate in the opposite direction. Lower rates apply from Texas to Mason City than to Milwaukee, and complainant argues that this adjustment also should be applied on traffic in the opposite direction. Milwaukee takes Chicago rates southbound, and the rates from Chicago and Milwaukee to the territories involved are made by the addition of differentials to the rates from St. Louis. For some years Mason City was in Fox River territory with respect to shipments of packing-house products to Arkansas and Texas, and took a 15-cent arbitrary over St. Louis. On March 8, 1912, the present rates were established on a basis of 9½ cents over St. Louis. An attempt was made to restore Mason City to the Fox River district basis of rates, but the attempt was protested by complainant and others, and the rates proposed were ordered to be canceled and the existing rates ordered

to be maintained for the statutory period. *Rates on Packing-House Products, Fresh Meats, and other Commodities from Mason City, Iowa*, 30 I. C. C., 341, decided May 5, 1914. Defendants maintain that this action on our part places Mason City in a preferred zone, with rates to Texas and Arkansas points that are $2\frac{1}{2}$ cents per 100 pounds over other Iowa packing plants on packing-house products, and about $2\frac{1}{2}$ cents on fresh meats to Texas points and 5 cents on fresh meats to Arkansas points.

Mason City is intermediate to Texas from St. Paul via the Minneapolis & St. Louis Railroad, and on packing-house products and fresh meats to Texas is on the same basis as St. Paul. The line of the Minneapolis & St. Louis Railroad through Mason City runs north and south. Chicago territory extends west as far as the line of the Minneapolis & St. Louis Railroad, but Mason City is approximately 90 miles north of the northern boundary of Chicago territory. Milwaukee territory, which has the same rates as Chicago to the points involved, is directly east of Mason City, but does not extend into Iowa, except to points on the west bank of the Mississippi River. Complainant argues that Milwaukee territory should be extended to include Mason City, but defendants reply that Mason City is not and should not be included in either Milwaukee or Chicago territory because the carriers' lines from Chicago and Milwaukee to the points involved do not pass through Mason City, and the location of Mason City reasonably precludes an extension of either of these territories to include it. Mason City is from 99 miles to 270 miles north of the route of any of the carriers which engage in this traffic from Chicago to the points involved. Certain carriers traversing Iowa from Chicago to the southwest by way of Missouri River points were required to establish the same rates from Chicago and certain intermediate points in Iowa. The Illinois Central Railroad is the farthest north Chicago to Omaha line on traffic destined to the points involved, and Mason City lies north of the Illinois Central's line. There is no line from Chicago which would carry traffic destined to the points involved through Mason City, and the short route to Louisiana and Arkansas lies through Mississippi River points and not through Missouri River points. The short-line distance from Chicago to St. Louis is 284 miles, while the short-line distance from Mason City to St. Louis is 440 miles.

The present rates from Mason City are materially lower than the mileage scale rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160.

We find that the rates from Mason City to the Arkansas and Texas points involved are not shown to be either unreasonable or unjustly discriminatory.

The rate from Mason City on packing-house products to Louisiana points is a differential of 8 cents per 100 pounds over the Chicago group rates; the rate on fresh meats a differential of 12 cents. There appears to be no justification for greater differentials on shipments to Louisiana than on shipments to Arkansas, and we find that the rates from Mason City to the Louisiana points involved are and for the future will be unjustly discriminatory to the extent that they exceed the Chicago rates to the same points by more than $2\frac{1}{2}$ cents per 100 pounds on packing-house products and by more than 5 cents per 100 pounds on fresh meats. The damage alleged by complainant to have been caused by the rates condemned is not established, and therefore no reparation will be awarded.

Appropriate order will be entered.

No. 7740.

CROWN-COLUMBIA PAPER COMPANY

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY.

Submitted July 28, 1915. Decided February 15, 1916.

Charges collected by defendant for loading into cars at Portland, Oreg., certain carload shipments of paper delivered by the Western Transportation & Towing Company and Willamette Navigation Company for transportation to Seattle and Tacoma, Wash., found to have been unreasonable. Reparation awarded.

F. J. Lonergan for complainant.

S. J. H. French for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of paper, with its principal office at San Francisco, Cal. By complaint, filed January 12, 1915, it alleges that the charge of 25 cents per ton assessed by defendant for loading into cars at Portland, Oreg., 12 carload shipments of paper received from the Western Transportation & Towing Company and the Willamette Navigation Company between July 1, 1913, and December 1, 1913, for trans-
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portation to Seattle and Tacoma, Wash., was unjust and unreasonable. Reparation is asked.

The shipments aggregated 324.2 tons and were delivered to defendant at Albina dock, Portland. Defendant charged 25 cents per ton of 2,000 pounds for handling the shipments across the dock and loading them. Complainant paid and bore the charges. Defendant testified that under its tariffs in effect prior to July 1, 1913, traffic interchanged with water carriers at Portland, originating at or destined to points north of Kalama, Wash., was loaded or unloaded without additional charge. Seattle and Tacoma are north of Kalama. Effective July 1, 1913, this tariff was canceled. Defendant states that the item which provided for loading and unloading without additional charge was erroneously omitted from the subsequent tariff, and that effective December 1, 1913, this error in publication was corrected. Defendant made no attempt to justify the 25-cent charge, but admitted its unreasonableness and expressed a willingness to make reparation.

We find that defendant has not sustained its burden of justifying the increased rate resulting from addition of the loading charge; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found to be unreasonable; that it has been damaged to the extent of the loading charges so paid; and that it is entitled to reparation in the sum of \$81.01, with interest from November 29, 1913. An order will be entered accordingly.

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No. 7092.

JACKSON CHAMBER OF COMMERCE

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Submitted May 12, 1915. Decided March 1, 1916.

Complaint that the classification by defendants of bar steel in carloads in the official classification is unreasonable and that rates for transportation of that commodity from Pittsburgh and points taking the same rate from Nicetown, Steelton, and Reading, Pa., and Youngstown, Ohio, to Jackson, Mich., are unreasonable and unjustly discriminatory not sustained.

J. B. Daish and J. R. Hoover for complainant.

J. T. Johnston and W. R. Cox for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

S. P. Woodside for Wabash Pittsburgh Terminal Railway Company and West Side Belt Railroad Company.

W. W. Collin for defendants generally.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This is a complaint that the classification by defendants of bar steel in carloads at fifth class in the official classification is unreasonable and that rates for transportation of that commodity from Pittsburgh, and points taking the same rate, from Nicetown, Steelton, and Reading, Pa., and Youngstown, Ohio, to Jackson, Mich., are unreasonable and unjustly discriminatory.

Jackson is located on the main line of the Michigan Central Railroad, about 75 miles west of Detroit, Mich., and about 70 miles northwest of Toledo, Ohio. It is also reached by the Grand Trunk Western Railway, the Cincinnati Northern Railroad, and by the New York Central Railroad. There is consumed at Jackson from 30,000 to 40,000 tons of bar steel yearly. It is largely used in the manufacture of auto rims, gears, forgings, and springs, and for the most part is secured from Pittsburgh. The value of the bars shipped in carloads at the time of the hearing was about \$1.10 per 100 pounds. There is considerable bar steel used in Jackson which is valued as high as \$6 per 100 pounds, but it is not shipped in carload quantities, and the rates applicable thereon are not herein involved.

Bar steel moving in carloads between points in official classification territory has been included in the fifth class in the official classifica-

tion, and since 1907 has taken rates accordingly, with a minimum weight of 36,000 pounds. At times, however, defendants have published exceptions to the classification, which named lower rates. In 1901 iron and steel articles, which include bar steel, carried sixth-class ratings from the points of origin involved to all points in central freight association territory; in 1903 the rates were advanced to 10 per cent above sixth class; and in 1907 the fifth-class ratings were reestablished. During the period of business depressions previous to 1903 departures from the classification basis as noted were made at the solicitation of different manufacturing concerns, which asserted that they required assistance.

Tariffs of defendants divide iron and steel and the products thereof into three groups. The limits of the classifying groups are determined by the progress of manufacture. The first is the raw material, or pig-iron group, which includes pig iron, mill cinders, molds, spillings, etc.; the second, semifinished material, or billet group, including billets, blooms, muck bars, ingots, scrap iron, etc.; and the third, the finished product group, including bar iron and steel bars and about 150 articles of iron and steel manufacture.

Rates on steel bars, in cents per 100 pounds, from the points of origin involved to Jackson at the time the complaint was filed, the rates now in effect, and the rates prayed for by the complainant are shown in the following table:

To Jackson from—	Rates when complaint was filed.	Present rates.	Rates prayed for.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Pittsburgh.....	16.8	17.3	12
Youngstown.....	14.5	15.3	10
Nicoletown.....	26.0	27.0	19
Reading.....	26.0	27.0	19
Steelton.....	26.0	26.0	19

The following table gives short-line distances to Jackson from the points named, the rates now in effect, the yield per ton-mile, and the car-mile earnings, based on the prescribed minimum of 36,000 pounds:

To Jackson from—	Miles.	Rates.	Per ton-mile.	Per car-mile.
		<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Pittsburgh.....	315	17.3	11	19
Youngstown.....	260	15.3	13	22
Nicoletown.....	672	27.0	8	14
Reading.....	614	27.0	8	15
Steelton.....	563	26.0	9	16

Rates on bar steel to all points in central freight association territory are on the same basis from a classification standpoint. Jack-

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son takes the same basis, although not the same rates, as Detroit, Toledo, and Cleveland, at which points are the chief competitors of complainant's members. The competitive destination points are not here represented; neither are the manufacturers at the points of origin. Steelton, Reading, and Nicetown are the only points in eastern trunk line territory mentioned in the complaint. From Steelton the Baltimore, Md., basis of rates applies on shipments to Jackson and all other points in central freight association territory, and from Nicetown and Reading the Philadelphia basis applies. Various producing points are allied with Steelton, Nicetown, and Reading, from a rate standpoint. The effect of a change of rates from the points complained of would involve the entire grouping of originating points, unless we are prepared to accord to Jackson a lower basis of rates than obtains to related points in the same territory.

Complaint is made that bar iron and steel are carried in fifth class with many articles of greater value and lower per car earnings. The proportion of fifth-class ratings to all carload ratings in the official classification is 51.71 per cent. There are several hundred items in the classification covering fifth-class ratings. In so large a group there are many differences in classification elements. It does not follow, we think, that bar iron and steel are wrongly classified simply because articles with different classification elements are included in the same class. The products of bar iron and steel shipped by complainants are also carried in fifth class. We have no warrant on this record to require that steel bars shall be removed from fifth and put in sixth class in the official classification. It is conceded by complainant that such a requirement would afford its members no relief from a competitive standpoint. We express no opinion with respect to the reasonableness of the classification of bar iron and steel with reference to the entire territory governed by the official classification. *Highland Iron & Steel Co. v. Vandalia R. R. Co.*, 18 I. C. C., 601.

The rates on bar iron and steel were increased after the petition was filed, and before hearing, in response to our findings in *The Five Per Cent Case*, 31 I. C. C., 351. It is contended by the complainant that the burden of proof to show that the increased rates are just and reasonable is upon the defendants, and that there is no justification in the record for the increases. The rates complained of were not increased with respect to Jackson alone. Similar increases were made to all points in the same territory. The question that this phase of the case presents is whether the increased rates to Jackson are shown by the facts of record to be reasonable. If so, the burden of proof imposed by the statute has been satisfied. We are of the opinion and find from the evidence before us that rates on bar iron

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and steel now in effect to Jackson from the points of origin involved are reasonable.

Complainant asserts that it is discriminated against because it does not have applied to it on shipments of bar steel from Pittsburgh and Youngstown rates in accordance with a strict application of the central freight association mileage scale. The short-line distance from Pittsburgh to Jackson is 315 miles, but the rate on bar steel is based on a distance of 375 miles. It does not appear, however, that Jackson is in any different situation in this respect than competitive points in the same territory. For example, Lansing, Mich., with an actual mileage of 357, is on the 400-mile scale; Kalamazoo, Mich, 376 actual, 425 scale; Grand Rapids, Mich., 410 actual, 450 scale; Detroit, 298 actual, 325 scale. Rates from Pittsburgh are grouped as to points of destination, and the mileage is averaged to all points in the groups. In this respect Jackson is not discriminated against, but is on the central freight association mileage scale to the same extent that other points in the same territory are on that scale. Toledo, an exception to the general rule, is 240 miles from Pittsburgh, and has rates applicable to that distance. The reason for this is that the Buffalo-Detroit fifth-class rating is 13 cents on the central freight association mileage scale via the lines north of Lake Erie. South shore lines working through Toledo to Detroit from Buffalo are required to hold Toledo to the same scale as Detroit. The Buffalo-Detroit and the Pittsburgh-Toledo mileages are substantially the same. The conditions which control at Toledo do not exist at Jackson.

It follows that the complaint should be dismissed, and it will be so ordered.

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FOURTH SECTION APPLICATION No. 10336.
RATES ON IRON AND STEEL ARTICLES FROM PITTS-
BURGH TERRITORY TO PACIFIC COAST PORTS.

Submitted December 3, 1915. Decided March 1, 1916.

Carriers authorized to establish rate of 85 cents per 100 pounds from Pittsburgh territory to Pacific coast ports on all iron and steel articles now taking rates from Chicago to said ports of 55 cents per 100 pounds.

Charles Donnelly and R. H. Countiss for petitioners.

T. O. Cole for Bethlehem Steel Company.

H. C. Crawford for Cambria Steel Company.

J. B. Campbell for Spokane Merchants' Association.

J. M. Glenn for Illinois Manufacturers' Association and Interstate Iron & Steel Company.

E. R. Griffith for Sharon Steel Hoop Company.

H. E. Harmon for Des Moines Bridge & Iron Works and Pittsburgh-Des Moines Steel Company.

W. E. Hoves for Lackawanna Steel Company.

R. E. Hearon for Colorado Fuel & Iron Company.

A. R. Kennedy for Pittsburgh Steel Company.

I. L. Kane for Brier Hill Steel Company.

Frank Lyon for American-Hawaiian Steamship Company and Luckenbach Steamship Company.

C. R. MacCarey for Milliken Brothers, Incorporated.

Mayer, Meyer, Austrian & Platt and *C. L. Lingo* for Inland Steel Company.

F. W. Maxwell for Denver Transportation Bureau.

N. L. Moon for Alan Wood Iron & Steel Company.

H. M. Newlin for Pennsylvania Steel Company.

J. T. O'Conner for Petroleum Iron Works Company of Sharon, Pa.

C. H. Rigart for American Iron & Steel Manufacturing Company.

F. A. Ogden for Jones & Laughlin Steel Company.

H. G. Wilson and *A. B. Loomis* for Toledo Bridge & Crane Company.

Arthur T. Waterfolt for Detroit Steel Fabricators.

H. E. White for Minneapolis Steel & Machinery Company.

H. M. Zook for Lukens Iron & Steel Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

By the above-numbered application filed by R. H. Countiss, C. C. McCain, and E. Morris, agents, carriers parties to westbound trans-continental tariffs No. 1-N (I. C. C. Nos. 996, 15, and 478, respectively) and No. 4-L (I. C. C. Nos. 997, 16, and 479, respectively), ask for authority to establish a rate of 55 cents per 100 pounds on certain specified iron and steel articles from Pittsburgh and common points (group B) and from Cincinnati and common points (group C) territories to Pacific coast ports without making such rate applicable to intermediate points of destination.

In our report of January 29, 1915, respecting *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, and in our amended report of April 30, 1915, respecting the same matter, 34 I. C. C., 13, the Commission authorized the carriers to establish a rate of 55 cents on certain iron and steel articles from Chicago and all points between Chicago and the Missouri River to Pacific coast ports with certain limitations respecting the rates to intermediate points of destination. At the time of the hearing in October, 1914, respecting the rates on the so-called schedule C commodities, the carriers explained that they contemplated extending the 55-cent rate on these iron articles from points as far east as Pittsburgh, and perhaps from the Atlantic seaboard, but at that time were unable to agree with their eastern connections concerning the divisions. The Commission acted upon the application as made and authorized the establishment of the rates from Chicago and other points of corresponding longitude. The application which is the subject of this report was filed on September 27, 1915. Authority is requested to extend the application of the 55-cent rate from territory east of Chicago as stated.

Protests against the application were filed by the American-Hawaiian Steamship Company and the Luckenbach Steamship Company, and they requested a hearing concerning the application. Hearing was held in November, 1915, and was attended by representatives of the railroads, the steamship interests, and the shippers. Argument was had before the Commission in December, 1915, and the application now stands for disposition.

The carriers rested their claims for relief from the fourth section upon the testimony presented at Chicago in October, 1914, asserting that they had at that time established to the satisfaction of the Commission the necessity and justification for the relief sought.

The testimony taken at Chicago and the testimony offered at the hearing in November, 1915, by the Luckenbach Steamship Company show that the water rate from New York to Pacific coast ports on a majority of the important articles in this list was 30 cents per

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100 pounds during the months of the year 1914 that the canal was open. In February, 1915, so much freight was being offered to boat lines that the three main steamship companies operating between the two coasts, the American-Hawaiian Steamship Company, the Luckenbach Steamship Company, and H. R. Grace & Company, began a systematic increase in many of their rates. These increases in water rates were said to be due in part to the fact that more freight was being offered to the boats than the boats in service could well carry, and in part to a conviction upon the part of the water lines that they had unnecessarily depressed the rates between the two coasts. It is stated that the war conditions in Europe created a demand for ships in the trade between Europe and America heretofore unprecedented. Many of the smaller steamship companies which had sought to share in the business between the Atlantic and Pacific coasts of North America found more lucrative employment for their ships elsewhere.

The increases made in the coast to coast rates on these iron articles were very marked. By July 15, 1915, the rates on a majority of these articles that in the fall of 1914 moved by water at rates of 30 cents or less per 100 pounds were 40 cents per 100 pounds, and in some instances were 45 or 50 cents. This was the condition existing at the time the canal was closed by slides in September, preventing the passage of ships.

The conditions existing during the last three months of 1915 as to the rates by water between the two coasts are admitted to have been abnormal. The Tehuantepec Railroad is not available as a link in a through route on account of war conditions in Mexico. The Panama Railroad is not in condition to handle the traffic which the steamboat lines could bring to it. Many of the boats that had used the canal are not equipped with fuel capacity or are not of such seagoing character as to undertake the long and rather perilous route through the Straits of Magellan. Under these circumstances the rates were again increased by the boat lines on these articles to figures varying from 45 to 50 cents per 100 pounds, which are, so far as we are advised, the rates now in effect.

It is urged by the railroads that the 30-cent rate in effect in 1914 represents the normal water rate between the two coasts which the rail lines must be prepared to reckon with and that the substantial increases are due to abnormal conditions on account of the European war and the diversion of boats from the coastwise to the European trade. On the other hand, the boat lines urge that the rates applied in 1914 by the boats were abnormally low and that the 40-cent rate more nearly represents the normal water rate on these articles.

The present rail rate on these articles from Pittsburgh to the Pacific coast is 73.9 cents per 100 pounds, made by combining the 38 I. C. C.

local rate of 18.9 cents Pittsburgh to Chicago with the 55-cent rate from that point to the coast.

The application is supported by the shippers in the Pittsburgh district and other districts that would benefit by the proposed rate. They urge that the 55-cent rate now in effect from Chicago gives to Chicago an undue advantage over Pittsburgh in the business on the Pacific coast. The application is also supported by the representative of the interests at Spokane, an intermediate point of destination. It is opposed by shippers of Chicago, who assert that their geographical location entitles them to a lower rate than Pittsburgh. It is also opposed by Atlantic seaboard shippers, who assert that a 55-cent rate from Pittsburgh will put the shippers on the Atlantic seaboard at a disadvantage.

It has been testified in this case that Pittsburgh is looked upon as the great price-making point for iron articles. It is asserted by witnesses in this case that, for example, the Seattle buyer of iron articles in the Chicago market pays for such articles in Chicago a price as much higher than the Pittsburgh price as the rate from Chicago to Seattle is lower than the rate from Pittsburgh to Seattle. The inevitable conclusion is that no consumer at the Pacific coast benefits by the reduction of rates on iron articles to the Pacific coast ports, unless such reductions apply from Pittsburgh.

It is possible that ultimately the Commission should authorize the establishment of the 55-cent rate from Pittsburgh in order to permit the movement of these articles by rail. The local rate Pittsburgh to New York on most of the important articles in this list is 16.9 cents per 100 pounds. A 30-cent rate from New York to the Pacific coast would attract a large percentage of this traffic to the boat lines as against a 55-cent rate all rail.

However, conditions have changed quite materially since the canal was opened, and under present conditions the 40-cent rate more nearly represents what the water competition now is, or is likely in the near future to be, than does the 30-cent rate. It seems clear that ordinarily the Commission should not, by relief from the fourth section, authorize the carriers to go any further in meeting water competition than is necessary to meet the competition afforded by water routes, because to do so would give a permanent advantage to some localities to the disadvantage of competing localities. A 65-cent rate from Pittsburgh on these iron and steel articles under the conditions that existed during the year 1915 prior to the closing of the canal by slides would permit the movement of these articles via New York and water thence to the coast, and would permit also the movement of a considerable percentage of the traffic by rail.

It is impossible at this time to foretell the degree of competition which the water lines are likely to afford during the coming year. It is asserted that it may be several years before boats will care to bid for this traffic strongly enough to offer a 30-cent rate from New York. When that time comes, if it ever does, the Commission can, if requested to do so, consider such proposed reductions in rates by rail as may be thought necessary to meet the situation. In authorizing the establishment of a rate of 65 cents from Pittsburgh to the Pacific coast we are permitting on this traffic only the same differences between the Pittsburgh and the Chicago rates to the Pacific coast that are now permitted on rates on these articles to intermediate points.

We shall, therefore, authorize these carriers to establish from Pittsburgh and points grouped therewith and from Cincinnati and points grouped therewith rates on these iron and steel articles of 65 cents per 100 pounds to the same Pacific coast ports to which we have authorized the establishment of the 55-cent rates from Chicago. The rates to intermediate points on these articles will be controlled by the requirements of our Fourth Section Order No. 124, of April 30, 1915. An appropriate order will be entered permitting the establishment of the rates authorized on five days' notice.

No. 7703.
SWIFT & COMPANY
v.
**MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP
COMPANY ET AL.**

Submitted December 18, 1915. Decided March 3, 1916.

Rates for the transportation of rock salt in carloads from Louisiana points to Fort Worth and North Fort Worth, Tex., found to be unreasonable. Reasonable maximum rates prescribed for the future and reparation awarded.

Albert H. & Henry Veeder, R. C. McManus, and R. D. Rynder for complainant.

A. R. Urion, C. J. Faulkner, jr., and H. K. Crafts for intervener.

F. H. Wood; Denegre, Leovy & Chaffe; Baker, Botts, Parker & Garwood; and W. G. Neimyer for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainant is a corporation engaged in the general meat packing business with a plant at Fort Worth, Tex. By complaint, filed January 28, 1915, it alleges that defendants' rate of 17½ cents per 100 pounds, increased on January 1, 1915, from 16 cents, for the transportation of rock salt in carloads from Avery, Salt Mine, and Weeks, La., to Fort Worth, is unreasonable to the extent that it exceeds the former rate of 16 cents. Armour & Company, operating meat packing plants at Fort Worth and North Fort Worth, Tex., intervened and made like complaint of the rates increased from the same points of origin to Fort Worth and North Fort Worth. The parties pray for the restoration of the former rate and both complainant and intervener ask for reparation on shipments made since the rate was increased.

The original complaint and likewise the intervening petition allege that the maintenance of the increased rate of 17½ cents subjects complainant and intervener to unreasonable prejudice and disadvantage and gives undue and unreasonable preference and advantage to their competitors at Little Rock, Ark. No evidence to that effect was introduced, however, and the allegation can not be further considered.

Fort Worth and North Fort Worth take the same rates and will for convenience be hereinafter collectively referred to as Fort Worth. Both complainant and intervener use large quantities of rock salt in the operation of their packing plants, which they ship principally from Avery, Salt Mine, and Weeks. From January 1, 1906, to January 1, 1915, the rate from these salt-producing points to Fort Worth was 16 cents. On the latter date it was, as stated, increased to 17½ cents.

Defendants, upon whom rests the burden of proof to show that the increased rate is just and reasonable, submitted in evidence a statement showing the chronological history of the rates from Salt Mine to Fort Worth during the period from January 6, 1898, to date, and also the rates which were contemporaneously in effect from Hutchinson, Kans., to Fort Worth. From this statement it appears that the rate from Salt Mine fluctuated from 21 cents to 16 cents and back to 21 cents until January 1, 1906, when the 16-cent rate was established and remained unchanged until the recent increase.

Defendants' witness proffered no evidence bearing upon the reasonableness of the present rate and merely stated he considered it reasonable and that it was increased in line with similar increases from other producing points to Texas points. The increases referred to we understand to be those made on the same date from Kansas mines to Fort Worth and other Texas destinations. The latter rates are now before us in another proceeding.

The short lines from the respective producing points in Louisiana to Fort Worth lie through Alexandria, La., and their average distance is 477 miles. The traffic moves, however, Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad, and Texas & New Orleans Railroad to Houston, thence Houston & Texas Central Railroad to Fort Worth, an average distance of 532 miles. Complainant compares the average haul, ton-mile receipts, and per car-mile earnings upon all traffic on defendants' lines as shown by statistics for the year ended June 30, 1914, with like returns produced by the present and former rates of 17½ cents and 16 cents, respectively. The statement shows the following:

Roads.	Average distance hauled per ton.	Average revenue per ton-mile.	Average tons per loaded car-mile.	Cents per car-mile.
	<i>Miles.</i>			
M. L. & T.	109	\$0.01117	19.67	21.97
T. & N. O.	120	.00956	20.62	19.71
H. & T. C.	151	.01135	17.21	19.53
Average.	126	.01069	19.17	20.40
Average on bulk salt from Louisiana producing points to Fort Worth, Tex., 17½-cent rate.	532	.00658	40	26.32
Average on bulk salt from Louisiana producing points to Fort Worth, Tex., 16-cent rate.	532	.00601	40	24.06

It appears from this comparison that the average per car-mile revenue of 26.32 cents which the present rate of 17½ cents yields upon a 40-ton load is relatively high when compared with the average per car-mile revenues on all traffic which accrue upon average hauls of less than one-fourth the distance that the salt is hauled.

The complainant shows that the volume of tonnage to Fort Worth is considerable. During the year 1914 Swift & Company shipped to their Fort Worth plant 163 cars of rock salt, averaging 80,739 pounds per car, upon which freight charges aggregating \$21,062.65 were paid. The traffic moves in box cars and loads practically to the capacity of the car.

Rock salt is not produced at Texas mines, from which complainant draws part of its supply of fine salt, and no rock salt has been shipped from the Kansas mines to Fort Worth because of the prohibitory rate. From comparisons made of the ton-mile revenue on rock salt from Louisiana mines to Fort Worth with the ton-mile receipts under rates on other salt from Texas mines to New Orleans and other Louisiana points, it is shown that for distances ranging from 446 miles up to 777 miles the carriers maintain rates which yield from 5.55 mills per ton-mile to 5.85 mills per ton-mile, while in the opposite direction for an average distance of 532 miles the present 17½-cent rate and the former 16-cent rate yield per ton-mile revenues of 6.58 and 6.01 mills, respectively.

Other comparisons made in the record might be cited here but we consider it unnecessary to do so. In our view defendants have failed to sustain the burden of proof cast upon them by the statute. We are of the opinion that the present rate has been, since its establishment, and for the future will be, unreasonable to the extent that it exceeded and exceeds 16 cents per 100 pounds, which rate we find reasonable.

We find that the complainant, Swift & Company, and the intervener, Armour & Company, have each made shipments of rock salt via defendants' lines from Avery, Salt Mine, and Weeks, La., to Fort Worth and North Fort Worth, respectively; that they have respectively paid and borne charges at the rate herein found to have been unreasonable; that they have been damaged thereby to the extent that the charges so paid exceeded the charges that would have accrued at the rate herein found reasonable, and that they are, therefore, entitled to reparation.

No order for the amount of reparation can be made at this time. The complainant and intervener should each prepare statements showing as to each shipment upon which reparation is claimed the date of movement, points of origin and destination, route, weight, car number and initials, rate charged, charges collected, and the

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amount of reparation due under our findings herein, which statements should be submitted to the carriers for verification by them. Upon receipt of statements so prepared by complainant and intervener and verified by defendants the Commission will issue such orders for reparation as may appear proper.

An order will be issued requiring the maintenance as maximum of the rate found reasonable.

No. 8016.

M. C. PETERS MILL COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted November 2, 1915. Decided March 3, 1916.

1. Upon a complaint and answer seeking a tariff construction sanctioning the retroactive application of a mixed feed transit arrangement of the Chicago, Burlington & Quincy Railroad Company at Omaha, Nebr.; *Held*, That the complaint must be dismissed.
2. Transit rules should be clear and free from ambiguity and must be enforced according to their terms; and no agreement between the shipper and the carrier assigning another meaning to them may lawfully be substituted.

E. P. Smith for complainant.

Byron Clark for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant, manufacturing stock feeds at Omaha, in the state of Nebraska, alleges that the rates exacted by the defendant during the period from October 15, 1913, to November 18, 1914, on certain shipments of beet-sugar refuse sirup were unjust, unreasonable, and excessive, and unjustly, unreasonably, and illegally discriminatory, in that such rates were unduly preferential of its competitors in St. Louis, Peoria, and Chicago. The defendant does not contest the case, but prays that upon the facts set up in its answer it may be authorized to construe its tariffs as contended by the complainant. Under that construction the complainant asks reparation in the amount of \$7,978.23.

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The stock feeds manufactured by the complainant are made of corn, oats, and alfalfa meal, sweetened usually with refuse sirup from beet-sugar factories in Nebraska, Montana, Colorado, and Utah; but the complainant also uses refuse molasses that comes from cane-sugar mills in the southern states and in Cuba. These four ingredients enter into the different brands of feed in varying proportions.

Grain and grain products, including stock feed, are shipped from Omaha to the east on proportional rates predicated upon a previous movement into Omaha from beyond. These rates carry the shipment to St. Louis, Peoria, and Chicago, as basing points, for 8 cents, 9½ cents, and 11 cents per 100 pounds, respectively. In this way there exists a rate parity on grain and grain products between the complainant and its competitors at these basing points with respect to shipments originating west of the Missouri River. The rates on refuse sirup, however, do not break at Omaha. From the western points of origin of the refuse sirup of sugar beets the rates per 100 pounds to Omaha and to the three basing points last named are as follows:

From—	To Omaha.	To St. Louis.	To Peoria.	To Chicago.
Fort Collins, Brush, Loveland, Colo., and Scottsbluff, Nebr.....	\$0.25	\$0.275	\$0.275	\$0.30
Billings, Mont.....	.30	.325	.35	.....

The result of this tariff situation, on actual shipments included in the complainant's claim for reparation, may be illustrated by a concrete example: In a carload of feed, shipped by the complainant through St. Louis to a point east thereof, the sweetening contained in the mixture was certified by the complainant as weighing 12,000 pounds. On that weight of refuse sirup the complainant paid the rate to Omaha. Assuming that the sweetening was refuse sirup from the western points named, this rate was 2½ cents per 100 pounds less than the rate on a similar shipment to St. Louis. But when the mixed feed, containing the 12,000 pounds of sweetening assumed to be beet-sugar refuse sirup, was shipped from Omaha to St. Louis, the complainant paid freight charges on the feed at the rate of 8 cents per 100 pounds. Assuming further, therefore, that the complainant's St. Louis competitor was manufacturing similar feed, from ingredients purchased in the same territory of origin as were complainant's materials, and was selling such feed in competition with complainant at the same destination, it will be seen that the complainant suffered a rate disadvantage of 5½ cents per 100 pounds on

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12,000 pounds of the carload, or \$6.60. On like assumptions. the complainant would suffer a similar disadvantage on all its shipments destined to or basing on St. Louis; on business moving to or through Peoria or Chicago, its disadvantage would be at the rate of 7 cents and 6 cents per 100 pounds, respectively, on the weight of the refuse sirup.

It was because of these conditions that the complainant made overtures to the defendant with a view to having the disadvantage removed, and it was suggested to the carrier that its rates on beet-sugar refuse sirup to Omaha be reduced. This the defendant, for reasons not shown of record, chose not to do. But to remove the handicap disclosed by the complainant's experience under this rate adjustment, the defendant carrier agreed to provide a transit arrangement by which the rate on the refuse sirup contained in the mixed feed outbound from Omaha should be the balance of the through rate from the point of origin to the basing point. That arrangement was first sought to be made effective on October 15, 1913.

The adjustment contemplated by that tariff was to be accomplished by a claim settlement after the shipment had moved. In due time such claims were presented, all tariff conditions precedent to the payment thereof having been complied with. Some doubt arose, however, as to the sufficiency of the tariff provisions in that behalf and as to the legal right of the defendant to make settlements thereunder. The claims were accordingly held in suspense pending the submission of the matter to the Commission and a ruling by it in this proceeding as to the validity of the transit rule and as to the defendant's right to make adjustments on shipments that had moved under it. On November 18, 1914, a revised transit provision became effective, since which date similar claims have been paid to the complainant by the defendant, both the parties in interest evidently being satisfied of the legality of the revised rule.

The Commission finds itself unable to adopt the construction of the transit rules of October 15, 1913, that is urged upon it by the complainant and the defendant in their respective pleadings. While it may be conceded, as the defendant says, that the transit rule on sirup that then became effective was, in one sense, specific and positive, it was nevertheless insufficient to overcome the controlling general rule of the defendant's tariff that—

Mixed feed or other mixtures or blended products containing more than 20 per cent of ingredients other than grain, seeds, alfalfa hay, or products thereof, will not be accorded transit privilege.

As a matter of fact, as shown of record, the sweetening in the complainant's products exceeds 20 per cent. Under such circumstances we see no basis for the apparent agreement between the complainant

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and the defendant as to the lawful right of the latter to make settlements on the complainant's shipments moving under the transit rule in question. The provision just quoted, although there referred to as a general rule, was nevertheless specific and definite in providing that transit would not be accorded to mixed feed or other mixtures of blended products containing more than that percentage of ingredients other than grain, seeds, alfalfa hay, or products thereof. Manifestly the transit rule of October 15, 1913, was subject to that limitation. The fact that the rule was published by the defendant to meet the special demands of the complainant and was understood by both to cover the complainant's requirements is immaterial, for the tariff on its face admits of no such construction as the parties in interest now give to it. In *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418, it was said that a rate when published by a carrier in the form provided by law was as binding upon it as if that rate had been established by legislative enactment, and that it could not be departed from either by the carrier or the shipper except and until, in due course and in the manner prescribed by law, it had been found by the Commission to be unreasonable or discriminatory or otherwise unlawful under the act to regulate commerce. The same principle would seem to govern transit and other special services provided in the tariffs of carriers; they must be enforced in accordance with their terms, and when the provisions are clear and free from ambiguity no agreement between the shipper and the carrier assigning another meaning to them may lawfully be substituted. Nor, indeed, may this Commission sanction a departure from their plain meaning until, in a proper proceeding and upon a proper record, such rules have been found to be unlawful under the act. No such record has been made here.

The transit rule of October 15, 1913, is clearly subject to the limitation of the general rule above quoted, and a settlement of the complainant's claims by the defendant, the record showing that its feeds contained more than 20 per cent of refuse sirup, would be a violation of the defendant's tariffs, for the reason that the transit rule upon its face did not apply to such shipments.

We therefore find that the complaint should be dismissed, and such an order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 660. FIRE BRICK TO LOUISIANA POINTS.

Submitted December 6, 1915. Decided February 19, 1916.

Proposed increased rates on fire brick in carloads from Malvern and Perla, Ark., to Louisiana points not justified.

H. G. Herbel and F. G. Wright for respondents.

G. T. Atkins, jr., and E. C. Cottingham for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The schedules under suspension in this proceeding, filed to take effect June 21, 1915, proposed new rates for the transportation of fire brick in carloads from Perla and Malvern, Ark., to points in Louisiana west of the Mississippi River in the so-called Monroe-Alexandria-Shreveport group. A uniform rate of 14 cents per 100 pounds was proposed from and to the points named. This result is sought to be accomplished by reducing the rate from Malvern to Winnfield, La., by 3 cents and by increasing the rates from Malvern and Perla to the points named by from 2 to 7 cents per 100 pounds. Protestants' evidence and arguments relate exclusively to the rates from Perla. The St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, was the only respondent represented at the hearing.

The following table shows the distances from Perla to the destinations involved over the alleged logical workable routes, together with the present and proposed rates, and the ton-mile earnings under both sets of rates; rates are stated in cents per 100 pounds:

From Perla to—	Distance.	Present rate.	Revenue per ton-mile.	Proposed rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Alexandria.....	281	10.0	7.1	14	10.0
Monroe.....	183	7.0	7.2	14	15.3
Ruston.....	214	12.0	10.1	14	13.1
Tallulah.....	213	7.5	7.0	14	13.1
Winnfield.....	219	11.0	10.0	14	12.8
Shreveport.....					
Cedar Grove ¹	177	7.0	7.9	14	15.8
Gas Center ¹					

¹ Within the switching limits of Shreveport.

The present rates apply on fire brick in straight carloads. The proposed rate to Ruston and Winnfield is a specific commodity rate on fire brick, while the proposed rate to other destinations applies on fire brick, brick tile, ornamental brick, clay retorts, and various other clay products, in straight or mixed carloads. The present rates from Perla, except to Cedar Grove and Gas Center, were established in *Atchinson v. S. L., I. M. & S. Ry. Co.*, 22 I. C. C., 131, where we found that the rates then in effect were grossly in excess of the rates contemporaneously maintained on common brick between the same points and that, except for the rate to Ruston, they yielded revenues which were both excessive and maladjusted. The distances stated in that case, however, 382 miles to Ruston and 337 miles to Winnfield, were not over the shortest workable routes. The rates on common brick then in effect have been maintained continuously to the present time, except that the rate to Alexandria has been increased 1 cent per 100 pounds. No common brick is manufactured at Perla. Fire brick and fire clay are the only clay products manufactured there.

The Iron Mountain states that Perla is located in what is known as Little Rock-Fort Smith territory, approximately 40 miles south of Little Rock, and that rates on all traffic from this territory to Louisiana generally are made differentials under the rates from St. Louis, Mo. The western classification rates fire brick in carloads class E, and the rates from Little Rock-Fort Smith territory to Louisiana points are 8 cents per 100 pounds under the class E rates from St. Louis. The proposed rates will be 8 cents per 100 pounds under the commodity rates on fire brick to the same points from St. Louis, except that the rates to Ruston and Winnfield will be on a lower basis for the reason that these points are directly intermediate to Alexandria, respondents feeling that the Alexandria rate can not be exceeded. The Iron Mountain argues that the increases proposed will reestablish the usual basis and will preserve the integrity of the differential scheme described. The present rates are said to be too low, whereas the proposed rates would create a reasonable and proper relationship between the rates on fire brick and on common brick. The proposed rates are compared with rates on fire brick to the same destinations from Athens, Ginger, and Crush, Tex., which range from 9 cents to 22 cents for distances ranging from 257 miles to 408 miles.

The alleged basic rates from St. Louis apply on fire brick, clay retorts, and various other clay products more valuable than fire brick, in straight or mixed carloads. Protestants do not deny that the rates proposed would be reasonable on a mixed carload of fire brick and more valuable clay products, but contend that they would be grossly excessive on fire brick and fire clay in straight or mixed

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carloads. Rates are cited on paving brick, which is of approximately the same value as fire brick, from points in Kansas and Arkansas to Shreveport and various other Louisiana points, that range from 6 cents to 12 cents for distances ranging from 194 miles to 747 miles. One-line interstate mileage scale rates on fire brick and paving brick, maintained by carriers operating in Louisiana and Arkansas, also are cited which range from 7 cents to 9 cents for distances ranging from 174 miles to 219 miles. All of these rates indicate that the present rates involved are not unreasonably low. Protestants further show that the ton-mile earnings under the proposed rates would exceed the average ton-mile earnings of the Iron Mountain from all traffic over its lines during the year ended June 30, 1914, by more than 100 per cent.

While we do not disapprove of respondents' attempt to make uniform the rates from and to the points involved, we find that they have not justified the increased rates proposed, and an order will be entered requiring the cancellation, to the extent that increased rates are thereby provided, of the schedules specified in the orders of suspension.

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INVESTIGATION AND SUSPENSION DOCKET No. 704.
FRUITS AND VEGETABLES FROM NORFOLK, VA.

Submitted December 26, 1915. Decided February 21, 1916.

Proposed increased rates for the transportation of fruits, vegetables, and strawberries, any quantity, from St. Julian avenue station, Norfolk, Va., to New York, N. Y., not justified.

F. L. Ballard for respondents.

J. E. Cole for Norfolk Truckers' Exchange, Incorporated.

E. R. F. Wells for Southern Produce Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

A schedule in New York, Philadelphia & Norfolk Railroad supplement No. 5 to I. C. C. No. 2863, filed to take effect September 1, 1915, proposed to increase the rates on fruits, vegetables, and strawberries, any quantity, from Norfolk, Va., to New York, N. Y. Upon protest filed by the Norfolk Truckers' Exchange, of Norfolk, the schedule was suspended until December 30, 1915, and later until June 30, 1916. The New York, Philadelphia & Norfolk Railroad, hereinafter called respondent, receives freight at two stations in the city of Norfolk, Brooke avenue and St. Julian avenue; and its rates on fruits, vegetables, and strawberries apply from both stations. Respondent proposes to eliminate the application of the rates to New York from Brooke avenue station leaving them applicable only from St. Julian avenue station. In addition increases are proposed from St. Julian avenue station which range from 1.3 cents to 2.7 cents per barrel, crate, or package.

The St. Julian avenue station was established in April, 1914, and since that time respondent has required shippers of fruits and vegetables to deliver their shipments at that station. Brooke avenue station, on the Elizabeth River, is now used exclusively for the reception of general merchandise, including fish and oysters, although prior to April, 1914, both general merchandise and the articles involved were received there. Respondent's rails do not reach Norfolk. Prior to the establishment of St. Julian avenue station, shippers located on the Norfolk side of the Elizabeth River delivered their fruits and vegetable shipments to respondent at Brooke avenue station in wagons and boats where they were loaded into cars

on small harbor barges for transportation by respondent across the Elizabeth River to Port Norfolk. At Port Norfolk they were placed on bay barges, for transportation to Cape Charles, Va., where they were turned over to respondent for rail transportation by respondent, the Philadelphia, Baltimore & Washington Railroad, and the Pennsylvania Railroad, to New York. The Brooke avenue station was so badly congested at the height of the fruit and vegetable season each year during the period from 1909 to 1912, inclusive, that respondent found it necessary to use the terminals of the Virginian Railway in addition to its own facilities. From 1912 to 1913 the facilities of the Norfolk & Western Railway were used. The Norfolk & Western refused to renew the arrangement after 1913 and respondent thereupon purchased a tract of land at St. Julian avenue, approximately 1 mile from the Elizabeth River, where it laid certain switch tracks connecting with the Norfolk & Western Railway, at an aggregate cost of \$60,000. Cars loaded at St. Julian avenue are switched by the Norfolk & Western through Norfolk to South Norfolk, and thence by the Norfolk & Portsmouth Belt Line Railroad, hereinafter called the Belt Line, to Port Norfolk. The cars are transported beyond Port Norfolk in the same manner as the cars that originated at Brooke avenue prior to April, 1914.

The following table contrasts the proposed rates on representative commodities with the present rates:

To New York, N. Y.	Spinach (per bbl.)	Kale (per bbl.)	Potatoes (per bbl.)	Cabbage (per bbl.)	Straw- berries (per 60- qt. crate).
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Present rate from Norfolk.....	17.9	15.8	26.3	18.9	54.6
Proposed rate from St. Julian avenue, Norfolk,.....	19.5	17.5	29.0	21.5	56.0

The present rates from Norfolk also apply from respondent's terminal at Port Norfolk, and, on shipments weighing 10,000 pounds or over, from all points south of the Elizabeth River and the eastern branch, on the Belt Line. Cars loaded at points on the Belt Line are switched by the Belt Line to Port Norfolk, where they are delivered to respondent. No increases are proposed from any point taking Norfolk rates to New York except from St. Julian avenue station.

The present rates are identical with the rates applicable by way of the Old Dominion Steamship line, which operates a daily service, and additional steamers when the business requires them, from Norfolk to New York, making New York in from six to nine hours less time than respondent and its connections make it. The steamship line has a convenient terminal on the Elizabeth River in Norfolk,

and on an average handles about 85 per cent of the fruit and vegetable traffic from Norfolk to New York. The remainder of the traffic moves by way of respondent's line. Respondent urges that the present rates are depressed by the competition of the Old Dominion Steamship line, but that since the removal of its station to a point about 1 mile from the water front water competitive conditions no longer obtain with the same force.

The all-rail rate on potatoes to New York from Cape Charles and points north thereof, as far as Farnhurst, Del., near Wilmington, Del., is 31.5 cents per barrel. The proposed increase involved on potatoes from Norfolk is from 26.3 cents per barrel to 29 cents. Respondent states that the Norfolk rate should be 31.5 cents, but that it feels that water competitive conditions are sufficiently patent to prevent any rate in excess of 29 cents. All of the increased rates proposed are from one-half cent to 2 cents lower than the rates to New York from territory immediately adjacent to Norfolk; from the first group of stations on the Norfolk & Southern, for example. Respondent's witness testified: "We tried to meet a middle ground in between these two rates." The present rate on spinach in barrels from Norfolk to New York is 17.9 cents. The rate from the first group of stations on the Norfolk & Southern is 21 cents. These rates average 19.45 cents, while the proposed rates on spinach from St. Julian street station to New York is 19.5 cents. The rates proposed on the other commodities involved also represent substantially the averages of respondent's present rate on each commodity and the Norfolk Southern rate on the same commodity with fractions disregarded. But the rates used from points on the Norfolk Southern are of little value for comparative purposes, as the volume of the fruit and vegetable traffic from these points is negligible.

Respondent does not contend that the present rates are unremunerative, but that it is entitled to additional revenue on account of its investment at St. Julian avenue and the additional switching expense incurred in delivering cars to its barges at Port Norfolk. The amount of the additional expense is not definitely disclosed and the probable increase in revenue from the proposed rates is not shown. The investment at St. Julian avenue was made, in part at least, on account of the increased merchandise business at Brooke avenue station, and respondent urges that the burden of the cost of the new facilities should not be cast upon the products involved, while the commodities for whose benefit the new investment was made are exempted, the rates on general merchandise from Brooke avenue station not having been increased. Since the transfer of the fruit and vegetable traffic to St. Julian avenue from 15 per cent to 20 per cent of the space at Brooke avenue station has been rented to large shippers of mer-

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chandise. This could be used to advantage by shippers of fruits and vegetables, but would not entirely accommodate the total fruit and vegetable traffic from the Norfolk side of the Elizabeth River. The St. Julian avenue station was selected by respondent as a more advantageous point for the reception of these products. It is about 1 mile nearer the truck farms. But the shippers did not welcome the new St. Julian avenue station. The roads leading from the farms to St. Julian avenue team tracks are in poor condition, at times almost impassable, and respondent's refusal to receive fruits, vegetables, and berries at its Brooke avenue station has inconvenienced shippers greatly.

Respondent's transportation service is in some respects superior to that of the Old Dominion Steamship line in that more adequate refrigerator service is accorded, and also diversion in transit. But these advantages are also enjoyed by shippers of fruits and vegetables located at points south of the Elizabeth River and eastern branch on the Belt Line, from which points no increases are proposed. Approximately 30 per cent of the fruits and vegetables produced in the vicinity of Norfolk are raised and shipped from points south of these two rivers, the shipments being loaded into cars at points on the Belt Line and switched to Port Norfolk at a switching charge of \$1.50 per car, which respondent absorbs. The rates proposed from St. Julian avenue station would be higher than the rates applicable from these Belt Line points south of the rivers.

The cost of respondent's service from St. Julian avenue is less in some respects than its expense was from Brooke avenue, but in other respects it is greater. Respondent no longer has the expense of transporting cars by barges across the Elizabeth River, but absorbs \$3 per car for Norfolk & Western switching to South Norfolk, and \$1.50 per car for Belt Line switching from South Norfolk to Port Norfolk. The sum absorbed corresponds to the sum absorbed by respondent at the height of the fruit and vegetable season during 1912 and 1913 on shipments received at the Norfolk & Western terminal. The absorption on shipments from St. Julian avenue station is \$3 per car more than on shipments from points on the Belt Line. It is clear, however, that if respondent is placed at a disadvantage on shipments from St. Julian avenue station as contrasted with shipments from points on the Belt Line south of the Elizabeth River, it is the result of respondent's selection of the St. Julian avenue station and not the result of circumstances and conditions over which it had no control. The transportation conditions north and south of the Elizabeth River are substantially similar. Respondent stated categorically that the rates proposed are attributable to the increased cost of handling fruit and vegetable traffic at Norfolk, and admitted

that if the land had not been purchased for the new station the rates would not have been increased. But in providing a new and separate facility for the exclusive use of this particular class of traffic, respondent has not enhanced the value of the service accorded to the shipper. On the contrary, it has added materially to the shippers' inconvenience.

We can not find on this record to what extent the reservation of the Brooke avenue station for general merchandise has affected the value of the service to the shippers of general merchandise from Norfolk, but apparently their benefit from the exclusive use of the Brooke avenue station exceeds the benefit derived by shippers of fruit and vegetables from the exclusive use of the St. Julian avenue station. It may be a fair and reasonable practice from a practical standpoint to provide separate terminals for different commodities, but that question is not before us. It may also be that the present rates on fruit and vegetables from Norfolk to New York are lower than those which respondent would maintain were it not for water competitive conditions, although we express no opinion on this question. What we do find is that the purchase of an additional terminal under the circumstances disclosed does not justify the rates proposed as reasonable and that they would be unjustly discriminatory.

We find that the proposed increased rates have not been justified and they will be ordered canceled.

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No. 5239.

**IN THE MATTER OF MINIMUM CHARGES ON ARTICLES
TOO LONG OR TOO BULKY TO BE LOADED THROUGH
THE SIDE DOOR OF CARS.**

Submitted July 31, 1915. Decided March 1, 1916.

Upon further consideration, exception is here ordered to the uniform minimum charge rule applicable to long or bulky articles prescribed in the original report herein when shipments contain articles over 22 feet long and not exceeding 12 inches in diameter and other dimension.

R. C. Ross and C. A. Bovee for Jos. T. Ryerson & Son and others.

C. S. Belsterling for Illinois Steel Company and others.

F. W. Maxwell for Denver Chamber of Commerce.

J. M. Belleville for Pittsburgh Plate Glass Company.

H. G. McNeely for Independent Silo Company and Central Warehouse Lumber Company.

J. A. Smith for New Orleans Joint Traffic Bureau.

G. J. Bolender for Kalamazoo Tank & Silo Company.

W. J. Evans for National Implement & Vehicle Association.

E. M. Wilson for Indiana Silo Company.

W. V. Hardie for Oklahoma Traffic Association.

Walter Huncke for Des Moines Silo & Manufacturing Company and other silo companies.

O. F. Bell for Crane Company.

J. L. Roney for National Corrugated Cover Manufacturing Company and American Rolling Mill Company.

R. C. Fyfe and H. C. Bush for Western Classification Committee.

R. N. Collyer and F. L. Ballard for official classification lines.

W. R. Powe and William Burger for southern classification lines.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Chairman:

In the original report in this case, 33 I. C. C., 378, the Commission prescribed a rule applicable to the movement of long and bulky articles which was to be applied uniformly by the carriers parties to the three classifications, as follows:

Unless otherwise provided, a shipment containing articles the dimensions of which do not permit loading through the center side doorway, 6 feet wide by 7 feet 6 inches high, without the use of end door or window in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high, shall be charged at actual weight and authorized rating, subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment.

Following the application of this rule by the carriers the Commission received numerous complaints from certain shippers setting forth instances in which the rule worked a hardship when applied to their particular kinds of freight. These complaints were chiefly from the shippers of long iron and steel articles, shippers of long timbers, flagpoles and telegraph poles, and silo staves. Some of the instances cited were so aggravated that the matter was reopened for further consideration.

No complaints were received from the shippers of so-called bulky freight, and at the rehearing such of them as appeared stated that the rule was satisfactory to them. Representatives of plate-glass shippers, however, appeared, as did a representative of shippers from Denver, Colo., who complained of the operation of the rule in connection with the transportation of tanks, cam shaft pulleys, and riveted iron pipe, manufactured in Denver and adjacent territory.

Under official and southern classifications plate glass over 7 feet 6 inches wide by 15 feet long takes three times first class and in western classification takes twice first class. The weight of one plate of glass 7 feet 6 inches by 15 feet, boxed and packed for shipping, is about 400 pounds, and the packages range in weight according to the number of plates contained up to 1,500 pounds. The width of the packages in which this freight is shipped ranges from 5 to 15 inches. By tilting the package a shipment 95 inches high by 15 feet long can be loaded through a 7½-foot by 6-foot car door.

The contention of these shippers is that they should be accorded a rate on plate glass which would not penalize them when their shipments move in furniture cars or automobile cars which are furnished with larger doors and are themselves larger than the ordinary car. This contention has particular application to western classification. It is testified that these extra sized cars are readily available for loading less-than-carload freight in the different commercial centers in which this glass is accumulated in warehouses for reshipment, and that they should be allowed to use these cars without the extra charge attaching.

It appears that out of the 475,240 ordinary box cars owned by roads parties to western classification 25,290, or 5.4 per cent, are over 8 feet high. These unusually large cars are built under special designs for the carriage of furniture or automobiles and were primarily intended for the movement of carload freight of the particular description for which the car was constructed. It often happens that in returning these cars to their points of origin they are loaded back with less-than-carload freight, and it is often the case that such a car is available when one of these unusual sized shipments is offered for transportation.

Prior to the establishment of this rule, identical shipments moving on different days to the same consignee were assessed different transportation charges depending upon the equipment in which they moved. If an automobile or furniture car was not available and the shipment had to be loaded on an open car the minimum charge rule applied. If, however, on a succeeding day such extra sized inclosed car was available the shipment moved at the usual rate and actual weight, netting a much lower transportation charge.

Any classification rule is necessarily arbitrary to a greater or less degree, and with such an article as plate glass the line must be drawn somewhere. Under the rule formerly prescribed it appears that even more leeway is permitted as regards dimensions than was formerly permitted under the rules prescribed by the carriers, in that a shipment almost 8 feet high may now be moved without any penalty attaching.

From consideration of all the facts and circumstances the Commission is of opinion and finds that the operation of the rule prescribed when applied to the transportation of plate glass does not work an undue hardship on the shippers of that commodity.

The representative of the tank manufacturers and manufacturers of other types of bulky freight located at Denver, Colo., urges that an exception should be made to relieve the shippers in his locality from the operation of the extra charge applicable under this rule.

It was stated that the ranches are accustomed to use large shallow tanks as watering troughs. These sometimes are of dimensions as large as 8 feet by 8 feet and these shippers contend that the size of the door should be limited to dimensions no less than 8 feet by 8 feet. It appears, however, that in western classification provision is made for the shipment of tanks knocked down and that these tanks do move in other localities in western classification territory in such a way and are put together and soldered on the ranch by the purchaser. The same contentions are urged with respect to other forms of tanks, including so-called pulp tanks. The pulp tank is a part of an appliance used in mining operations. A blue print of one of these outfits indicates that the pulp tank can be shipped in sections and riveted together when installed. These tanks when put together are of considerable bulk and will not load through the side door of an ordinary box car.

It is here again contended on behalf of these shippers that the extra sized inclosed equipment should be available for the movement of their traffic without extra charge, the same as for the movement of automobiles and furniture, for the transportation of which this extra sized equipment was primarily constructed. It should be noted here, however, that the shippers have not shown that the volume of their extraordinary sized freight is such as to warrant the

carriers in assigning thereto a special type of equipment nor were other conditions shown which would warrant the Commission in requiring the carriers to supply this special type of equipment. Nor is it shown that the revenue yielded on their traffic under the actual weight and rate applicable is as much as the revenue resulting when the car is loaded with the kind of freight it was built to accommodate.

No conditions or circumstances have been shown which would warrant the Commission in making an exception to the rule on behalf of these articles mentioned, and it is the opinion of the Commission, and it so finds, that as to them the uniform rule as heretofore prescribed shall be applicable.

When the uniform rule is applied to very light, long articles, the resultant rate is practically prohibitive. Many instances were cited by the witnesses for different shippers who appeared at the rehearing, and who filed applications for a reopening of this matter, showing the excessive charges that were assessable under this rule.

In official classification there is an exception designated as note 2, which accords to certain iron and steel articles over 22 feet in length a minimum charge of 1,000 pounds at the first-class rate, regardless of whether the shipments move in box cars, stock cars, gondolas, or flat cars. This exception made rule 7 (B) and (C) of the classification, applying a minimum of 4,000 pounds at the first-class rate, inapplicable. The uniform rule simply was to be substituted for rule 7 (B) and (C), so that in official classification, as far as these iron and steel articles are concerned, this exception, note 2, remained operative, and although a large amount of testimony was introduced at the original hearing by the shippers affected thereby bearing on the reasonableness of this exception, this question was not at issue and is not now at issue in this case. The railroads make no claim that their revenues thereunder are not sufficient and the shippers claim that the rule is reasonable. Further, there is no claim herein that discrimination results in official classification territory, by reason of this rule, favorable to iron and steel articles and prejudicial to other articles. The Commission is empowered to fix maximum rates only, and where this is accomplished by means of classification provisions the action is no less a fixing of maxima, from which the carriers may make concessions where unjust discrimination does not result. The uniform exception which is prescribed hereinafter extends the exception to all long articles of defined dimensions and shall be applied also in official classification as maxima.

In western classification and southern classification no exceptions are made to rule 17 (B) and rule 36, section 3, respectively, for which the uniform rule was to be substituted, and the carriers in these classification territories have not seen fit to adopt exceptions to that rule which would give relief against the excessive charges

resulting in some instances from its application. It should be noted here that the wording of the uniform rule "unless otherwise provided" is such as to permit of necessary exceptions.

It appears that 22 feet is the maximum length of a rigid article that can be loaded into an ordinary 36-foot box car through the center side door thereof without the use of an end window. It further appears that there are a large number of box cars over 36 feet in length and a large number of 36-foot box cars equipped with end windows, and that there are often available numbers of furniture cars and extra size inclosed cars which will permit the loading of long articles much in excess of 22 feet. The rules which are directly in issue in this case were primarily prescribed to cover shipments which move on open cars.

The movement on open cars is more expensive because of the greater empty return movement and the lighter loading of the cars, both together justifying the application of a minimum charge rule. If this freight, which ordinarily under average standard equipment would have to move on an open car, can be loaded into an inclosed car of unusual dimensions, or a car equipped with end doors or windows, other freight is usually available which can be loaded in the same car with this long freight and more economical transportation results. While it appears that there is additional handling and service necessary in loading this freight in any kind of inclosed car over that incident to the loading of ordinary freight, as will be pointed out hereinafter, yet this extra service is not always commensurate with the service when the transportation is performed with an open car. Classification should aim to provide for the most economical movement of freight, and to this end provision should be made for the utilization of equipment other than standard under properly related charges.

It would seem, however, that this long freight, even though loaded in a closed car, is more difficult to transport than other freight. It is necessary to lift the long article, while at the same time it is being pushed through the side door, high enough to shove it through an end window, if the car is so equipped, to continue the process of shoving and lifting until the end passes the side door, and then bring the article back into the car and into its resting place. Such a process requires extra handling, and it is necessary that the car be properly placed at the freight house door so that the next car will not interfere with the article when it is shoved out of the end window. In unloading it may be necessary to cut the train in order that this long article may protrude through the end window of the car in which it is loaded. If the length is not such as to require the cutting of the train and the extra work, nevertheless, if over 22 feet long, it

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extends past the door when it is in its place. If, in addition to being unusually long, it is also heavy, the article must be loaded into the car before other freight is loaded, because if placed on top of other freight it might do damage. Therefore this long article, extending beyond the side door of the car, interferes materially with the further loading of this car, especially at freight houses where several cars are placed abreast and when there is trucking from one car to the other. The difficulties of loading and unloading this freight into inclosed equipment warrant some extra charge being made therefor, and to this most of the shippers appearing at the hearing agree. When extraordinary equipment is used, that is, large cars which were primarily constructed to accommodate certain classes of freight, such as vehicles, furniture, and automobiles, the same rate-making principle should also apply.

It appears that 41 principal carriers parties to official classification own and operate 508,404 ordinary box cars. Of this number 25,184, or 4.8 per cent, are equipped with end windows. In western classification territory the carriers own 256,758 ordinary box cars 36 feet and under in length, of which 172,916, or 66.8 per cent, are equipped with end windows, and 193,192 cars 40 feet in length and over 36 feet, of which 130,240, or 67.4 per cent, are equipped with end windows. They own 25,290 cars over 40 feet in length, such as automobile equipment with staggered doors or extraordinarily wide doors, of which 20,000, or 79 per cent, have end doors. The 17 principal carriers subject to southern classification own and operate 92,442 cars, of which 9,012, or 9.7 per cent, are equipped with end windows available for loading. From this it is seen that there is considerable difference in the equipment in the several classification territories. It should be noted, however, that the shippers testifying as to official and southern classification territories said that they had never experienced any difficulty in obtaining cars in which they could load this long freight.

The principal complaints as to the operation of the uniform rule as applied to long articles come from shippers of silos and silo repairs and shippers of iron and steel articles, including shafting, and long wooden timbers, located in southern and western classification territories. It appears, however, that the Western Classification Committee has received complaints from shippers of telephone poles and flagpoles made of wood or iron.

Silos are constructed by assembling a number of wooden pieces, generally 2 inches thick by 6 inches wide, and varying in length from 10 to 40 feet. The silos when constructed vary in dimensions from 10 feet in diameter by 20 feet high to 14 feet in diameter by 40 feet high. In western classification territory 14 feet by 30 feet is the

average. The silos vary in weight, the 10 by 20 size weighing about 3,500 pounds, while the weight of the average silo, namely 14 by 30, is approximately 6,000 pounds. The staves that are used in the construction of silos need not necessarily be as long as the height of the silo, and some silos are constructed by using spliced staves. The one-piece stave silo, however, is more desirable and more expensive, and it appears that one shipper who specializes in one-piece stave silos shipped 9,000 silos last year, of which the average length of the staves was 27 feet. A 30-foot stave will average 75 pounds in weight. The value of the staves varies according to length. The value of a 20-foot stave is given as ranging from 90 cents to \$1, whereas a 40-foot stave is worth \$2.50.

The application of the uniform rule prescribed affects the shipment of complete silos as well as shipments of single staves, which are often shipped to repair silos. Silos in official classification take third or fourth class, in southern classification take sixth class, and in western classification take third class. When the uniform minimum charge rule is applied to complete silos, weighing 6,000 pounds, the increase per silo is not so severe, but when applied to the shipment of a single stave the resultant rate is prohibitive, in that the charge for the shipment of a single stave, weighing 75 pounds, is as much as the charge for a complete silo, weighing 6,000 pounds.

With iron and steel articles, the result is the same. Where the article is long and light and the other articles in the shipment are not of sufficient weight, the application of the minimum charge rule is a severe burden on the movement of this traffic. In most instances these long light iron and steel articles can not be bent or otherwise packed to permit of ordinary handling. If they are bent, they lose their tensile strength and are not suited for the purpose for which they are intended. The shippers of this material suggested an exception to the rule to be applied in western and southern territories practically the same as note 2 to official classification, with the size of the car, however, limited to 40 feet instead of the ordinary car of 36 feet, as adopted in the original report in this matter.

It does not appear from the testimony what is the size of the end doors or windows available for loading in the different classes of inclosed equipment owned by the carriers as given heretofore in this report, but granting that these end windows will average at least 2 feet by 2 feet, it appears that the largest width or diameter of a rigid article over 22 feet long that may be loaded through a 6-foot center side door of a 36-foot car with the aid of such an end window is 12 inches.

Any minimum charge rule is necessarily somewhat arbitrary, but in arriving at the exception hereinafter prescribed to the uniform
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rule we attempt to fix a minimum charge, which will on the one hand yield the carriers an average adequate revenue, and on the other hand make applicable a rate under which the particular traffic may move without an undue burden.

From a consideration of all the facts and circumstances the Commission is of opinion and finds that in addition to the rule heretofore prescribed, the carriers parties hereto shall publish an exception to that rule which is hereby found to be reasonable, as follows:

Unless a lower rate is otherwise provided, a shipment which contains an article exceeding 22 feet in length and not exceeding 12 inches in diameter or other dimension shall be charged at actual weight and authorized rating, subject to a minimum charge of 1,000 pounds at the first-class rate for the entire shipment.

No. 6585.

J. F. LUCEY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted March 4, 1915. Decided February 21, 1916.

Reparation awarded on account of overcharges on shipments of wrought-iron pipe in carloads from Wheeling, W. Va., to Wasco, Cal., and points on the Sunset Railway in California.

H. L. McNair for complainant.

E. W. Camp and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in selling oil well materials and supplies, with its principal place of business at Los Angeles, Cal. By complaint, filed February 9, 1914, it alleges that the rates charged by defendants for the transportation of 58 carloads of wrought-iron pipe from Wheeling, W. Va., to Wasco, Pentland, Ethel D, Moron, Milso, Fellow, and Shale, Cal., shipped between May 18, 1911, and October 31, 1911, were unreasonable and in excess of the charges assessable at the lawfully established rates applicable to the movements. Reparation is asked. The claim was presented

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informally March 17, 1913. The allegation that the rates charged were unreasonable was abandoned at the hearing.

All of the points of destination named, except Wasco, are located on the Sunset Railway, which connects with the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, at Bakersfield, Cal. Stations Ethel D and Milso subsequently were renamed Wellman and Midoil, respectively. Wasco is on the main line of the Santa Fe about 25 miles north of Bakersfield. The shipments moved over the Santa Fe from Chicago or Kansas City, consigned to complainant at Los Angeles. Most of the shipments were diverted in transit at Barstow, Cal. A few moved into Los Angeles and were reconsigned at that point. The point of actual diversion, however, is not material. The shipment destined to Wasco was transported to Wasco by the Santa Fe. The remaining shipments were delivered to the Sunset Railway at Bakersfield. The rate charged on the shipment to Wasco was \$1.09 per 100 pounds, composed of a 65-cent commodity rate from Wheeling to California terminals and a fifth-class rate of 44 cents from Stockton to destination. The rate charged to Pentland was \$1.10: 65 cents to California terminals plus the fifth-class rate of 45 cents from Los Angeles to destination. The rates charged to the points beyond Pentland were combination rates based on Pentland: \$1.10 to Pentland plus the local rates of 4 cents from Pentland to Moron and Ethel D, 6 cents to Milso and Fellow, 8 cents to Shale.

The rate component charged to the California terminals is not attacked. Complainant contends that for the transportation performed within the state of California it was entitled to the lowest rate applicable from any California terminal to destinations, and that lower rates lawfully were applicable over defendants' lines from San Francisco than the rates charged from Los Angeles and Stockton. The question presented is the application of the tariffs governing the movement from the California terminals to destinations.

Through rates constructed by the addition of the rates applicable to California terminals and the rates from the terminals to destination were authorized by the following tariff provision:

If the aggregate of the intermediate rates or the aggregate of the rates applying from point of origin to California terminals named in transcontinental freight bureau westbound tariff No. 1-L (I. C. C. Nos. 18, 255, and 929 of C. W. Bullen, agent, J. F. Tucker, agent, and R. H. Countiss, agent, respectively), supplements thereto and reissues thereof, and the rates applying from said California terminals to point of destination, makes less than the through rate named in this tariff or as amended, the combination rates so made will apply.

This provision clearly required the addition of the lowest rate to final destination from any California terminal to the rate applicable to California terminals.

A legally established joint rate applied from Los Angeles to Pentland. The aggregate of intermediate rates to and from Bakersfield was less than the joint rate, but was inapplicable for want of proper tariff authority. The rate from Los Angeles was lower than the through rate from any other California terminal and therefore properly was applied. The reasonableness of this rate is not before us. The departure from the aggregate of intermediate rates rule of the fourth section was protected by an appropriate application which is still pending.

There were no joint rates from San Francisco or Los Angeles to the points beyond Pentland. Tariffs of the Santa Fe formerly provided that rates from San Francisco to such points should be composed of the rate to Pentland and the local rate beyond, but this provision was canceled and authority given for the application of combination rates before the shipments moved. The lowest combination rates available were combination rates based on Bakersfield, which were the rates legally applicable. When the shipments moved the Santa Fe had in effect a rate of \$4 per ton, or 20 cents per 100 pounds, on wrought-iron pipe in carloads from San Francisco to Los Angeles, which by intermediate application applied also on interstate shipments to Bakersfield. The carload rates on wrought-iron pipe from Bakersfield to the points beyond Pentland were 17 cents to Ethel D, 19 cents to Moron, 21 cents to Milso and Fellow, 23 cents to Shale. The combinations of these rates to and from Bakersfield also made the lowest combinations from any California terminal to the points beyond Pentland.

Wasco also is intermediate to Los Angeles from San Francisco, and defendants admit that the rate to Wasco should have been constructed by the addition of the 20-cent commodity rate, applicable from San Francisco to Los Angeles and intermediate points, to the California terminal rate, instead of the 44-cent fifth-class rate from Stockton which was charged.

Defendants contend that the tariff provision above quoted required the use either of the aggregates of intermediate rates or of the rates to and from the California terminals, but not a combination of the two. They insist, accordingly, that when the rate to the terminal was used the application of the intermediates from the terminal to destination was precluded. We agree with this contention relative to the rate to Pentland, but not for points beyond, since there were no through rates to such points. Defendants point out that the application of combination rates to points beyond Pentland lower than the joint rate to Pentland would violate the long-and-short-haul rule of section 4 of the act, but this is a matter for which the defendants are responsible. Defendants also object that

the 20-cent rate from San Francisco to Los Angeles should not be used, because the clause which authorized its intermediate application did not apply to traffic moving wholly within the state of California. The shipments involved were interstate shipments.

Not all of the carriers that participated in the transportation of the through shipments are made parties, but the carriers who received the separately established part of the through charge assailed are properly before us, and while the eastern roads would be proper parties they are not necessary parties. The application of the 20-cent rate from San Francisco to Bakersfield and Wasco was discontinued October 31, 1911, so that the conditions which occasioned the complaint no longer exist. Therefore only the question of reparation requires decision.

Upon all of the facts of record we find that all of the shipments to points beyond Pentland were overcharged in that the rates applied exceeded the 65-cent rate to California terminals, plus the combination rates available from San Francisco to destinations based on Bakersfield, and that the shipment to Wasco was overcharged 24 cents per 100 pounds; that complainant made the shipments described in accordance with the foregoing statement of facts, and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the published tariff rates legally in effect; and that it is entitled to reparation in the sum of \$2,758.73 with interest on \$2,583.67 from December 16, 1911, and interest on \$175.06 from June 17, 1912.

An appropriate order will be entered.

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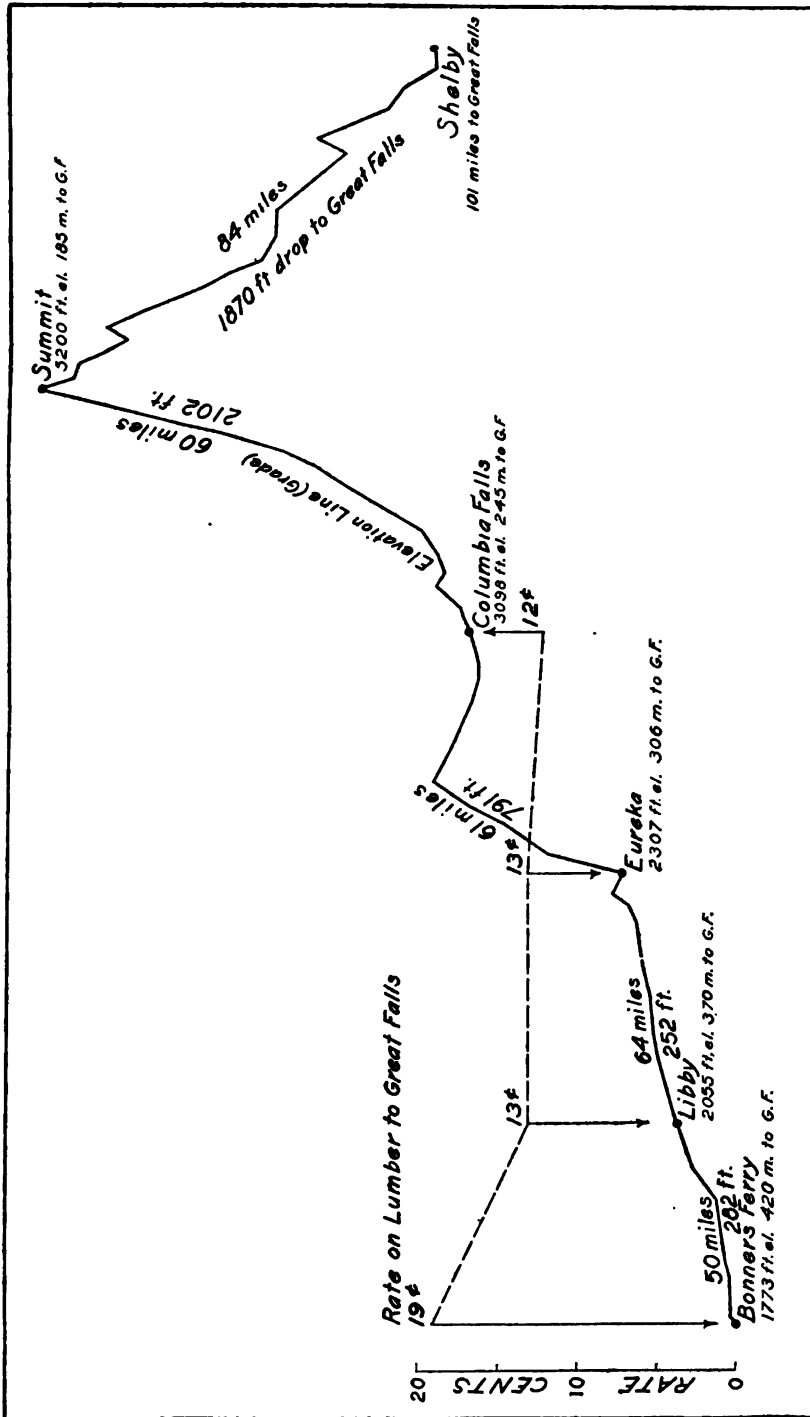
of the rates from Bonners Ferry and from Montana producing points. Except for comparisons of the rates assailed with intrastate rates in effect between points in Montana prior to December 12, 1913, which complainant states were voluntarily maintained by defendant for a long time, the only evidence offered by complainant that the rates assailed are unreasonable is a citation of revenue and earning statistics and of rates maintained by other roads under substantially dissimilar circumstances and conditions.

Bonnors Ferry is 50 miles west of Libby and approximately 113 miles west of Eureka and is at an elevation of 1,773 feet. Libby is 2,055 feet above sea level; Eureka about 2,307 feet. Sharp grades are encountered from Eureka to the Kalispell plateau; the so-called Stryker Divide is crossed, involving a rise of nearly 1,000 feet in approximately 23 miles. Columbia Falls, the extreme eastern point of the Kalispell group, is about 60 miles west of the summit of the Rocky Mountains, the elevation of which at Summit, Mont., is 5,200 feet. The accompanying profile shows graphically the topography of the country between Bonners Ferry and the eastern slope of the Rocky Mountains and the relationship of the rates from Bonners Ferry, Libby, Eureka, and Columbia Falls to a typical Montana destination point.

The character of the timber in the territory involved was discussed in *Kalispell Lumber Co. v. G. N. Ry. Co.*, 16 I. C. C., 164. We found there that white pine was the characteristic tree of the Spokane group, larch of the Montana groups, and these findings are borne out, with some modifications, by the record now before us. An authority on forestry, who testified at the hearing, stated that the change in the character and quality of timber from the low-grade larch and fir of the higher altitudes of the Kalispell district to the high-grade pine of the Spokane district is gradual, and that there is no sharp line of demarcation. In his opinion, the territory between Spokane and Columbia Falls might properly be divided, according to the character and quality of timber produced, into three groups: The white-pine territory extending from Spokane to somewhere between Sand Point and Bonners Ferry, Idaho; the larch territory from Columbia Falls to somewhere between Eureka and Libby; and intermediate or transition territory, including Libby and Bonners Ferry, where are found varieties of mountain trees of better quality than those found in the Kalispell district, a small amount of white pine inferior to that found in the Spokane territory, and a considerable portion of yellow pine.

Complainant owns timber in both Idaho and Montana. Its total holdings are estimated to consist of about 32.3 per cent of pine, 12.5 per cent of spruce, 55.2 per cent of larch and fir. Complainant's

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timber tracts in Montana are intermingled with those of the company that operates a mill at Libby. The company operating at Libby gets its logs to Libby by rail. Complainant's mill is located on the bank of the Kootenai River, and the logs used are floated to the mill. Complainant states that it has quite a wide market for its higher grade lumber, but that the natural and only market for its low-grade larch and fir is eastward along defendant's line. It contends that direct competition with the Montana mills, which fix the prices that complainant must meet, is encountered at Montana points, and that the differentials enjoyed by these Montana producing points under Bonners Ferry almost shut complainant out of the Montana market.

The following table compiled by complainant illustrates the present relationship of rates from Bonners Ferry and Montana producing points as exhibited by the average rates per 100 pounds and earnings to 32 representative Montana consuming points:

From—	Distance.	Rate.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Kalspell.....	354	16.5	9.53
Eureka.....	400	17.5	8.87
Libby.....	464	17.5	7.59
Bonners Ferry.....	514	23.5	9.37

This table shows that the rates from Eureka and Libby are relatively lower than the rates from Bonners Ferry.

Intervenors admit that the present adjustment between Bonners Ferry and Libby is improper, but strongly oppose any change in the relationship between Bonners Ferry and their mills, which they deny to be discriminatory. The State Lumber Company, whose mill is at Columbia Falls, urges the distance from there to Bonners Ferry and the topography of the intervening country, which it is in a position to urge more strongly than its cointervener, whose mill is at Eureka, west of the Stryker Divide. Otherwise, however, intervenors' contentions are practically identical. They relate to the difference in the quality, character, and weight of the timber tributary to the respective mills here involved. It is stated that complainant has a considerable quantity of pine timber available, and that over 60 per cent of the timber which it mills is pine, which is worth about \$2 per 1,000 feet more than the larch, to which intervenors are restricted. Also that the lumber manufactured by complainant averages about 300 pounds per 1,000 feet, or 8,000 pounds per car less than the lumber manufactured by intervenors. The following table compares car-mile earnings under rates to 32 representative Montana destinations on this basis:

From—	Distance.	Rate.	Gross revenue per car.	Revenue per car- mle.
	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>
Kalispell.....	354	16.5	\$106.99	30.22
Eureka.....	400	17.5	112.47	32.36
Libby.....	464	17.5	99.34	21.41
Bonnors Ferry.....	514	20.5	133.40	26.96

Complainant admits that it manufactures a large percentage of pine lumber, but insists that it owns a much larger percentage of low-grade lumber than of pine, which it can not dispose of, and that it devotes its energies largely to cutting and manufacturing pine in order to remain in business. The average weights of the lumber produced at the various mills described were taken from actual shipments, but the weight of shipments from complainant's mill at Bonners Ferry can not be fairly illustrative of the weight of shipments which might move from Bonners Ferry to points in Montana if complainant's prayer should be granted, for the reason that complainant is seeking an outlet in Montana for its low-grade larch lumber, which in all probability would not weigh much less than the lumber manufactured by interveners. Appreciable quantities of complainant's lumber are kiln dried, whereas the air-drying process generally is employed by Montana mills, but complainant states that the advantage of reduced weight on which freight charges must be paid derived from kiln drying is neutralized to a certain extent by the investment in the equipment used.

The grouping under which rates are adjusted from Bonners Ferry and Montana producing points to North Dakota and Minnesota is the result of our decision in the *Kalispell Case*, *supra*. Previous to that decision the rates to North Dakota from all points in the Spokane group which, under the decision in *Potlatch Lumber Co. v. N. P. Ry. Co.*, 14 I. C. C., 41, extended from Spokane, Wash., to Columbia Falls, Mont., were the same. In the *Kalispell Case*, *supra*, the Spokane group was divided into three parts. The Spokane rates were left in effect from points between Spokane and Leonia, Idaho, which is very close to the Montana-Idaho state line. Points between Libby and Rexford, Mont., were given rates 2 cents under Spokane at the eastern boundary of North Dakota, graded down to 4 cents less at the western boundary. Rates from points between Rexford and Columbia Falls were fixed at 3 cents under Spokane at the eastern boundary of North Dakota, graded down to 5 cents less at the western boundary. The differentials between Bonners Ferry and Montana producing points grade down eastward from the North Dakota-Minnesota state line. Complainant was not represented at the hearing in the *Kali-*

spell Case and contends that our action in extending the new Spokane group practically to the Idaho-Montana state line and to include Bonners Ferry was based on insufficient evidence.

The average distance from Bonners Ferry to 42 representative North Dakota destinations is 972 miles and to 10 Minnesota destinations 1,148 miles. For shipments to points in these states complainant asks to have Bonners Ferry included in the western Montana group established in the *Kalispell Case, supra*, with rates identical with the rates from Libby and 1 cent higher than the rates from Kalispell. Complainant's evidence in support of this request and interveners' evidence against it is virtually identical with the evidence offered relative to the Montana situation, and therefore does not require detailed discussion.

Defendant makes no attempt to defend the existing relationship between Bonners Ferry and Montana producing points. It admits on the contrary that the differential is too great. The reductions effected in the rates from Bonners Ferry on September 1, 1913, were intended to put complainant on a fair footing with its competitors. Defendant was powerless to increase the intrastate rates from Montana points and delayed reducing the rates from Bonners Ferry only because of its uncertainty as to the attitude of the Montana commission. That commission almost immediately ordered the intrastate rates reduced so as to restore the former differentials in favor of Montana points under Bonners Ferry. The record in the proceeding before the Montana commission and the testimony of a member of that commission show that it was not probable that the Montana rates would have been disturbed if the Bonners Ferry rates had not been reduced.

Defendant contends that the rates in effect from Bonners Ferry prior to September 1, 1913, were reasonable, stating that the reductions effected on that date were made only to remove discrimination that could not be removed in any other way. We are asked therefore to consider the relationship of rates involved on the basis of the rates in effect prior to September 1, 1913, instead of on the basis of the rates now in effect. Rates for similar distances on other parts of the Great Northern system and on the Northern Pacific Railway are cited, but are not shown to be used for the transportation of similar varieties of lumber or to apply under transportation and competitive conditions similar to the conditions affecting the rates involved. The present rates from Bonners Ferry, however, are somewhat lower than the rates to North Dakota for similar distances prescribed in 1909 in the *Kalispell Case, supra*.

We find that defendant's present rates for the transportation of lumber from Bonners Ferry to the Montana destinations involved are

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just and reasonable, and that the present relationship of rates to these destinations from Bonners Ferry and from Montana producing points, Whitefish to Columbia Falls, inclusive, and on defendant's Kalispell branch is not unjustly discriminatory, but that the present adjustment of rates from Bonners Ferry and from Montana points Fortine to Libby, inclusive, unjustly discriminates against Bonners Ferry to the extent that the rates from Bonners Ferry exceed the rates from Libby by more than 1.5 cents per 100 pounds and the rates from Eureka by more than 3.5 cents. In observing the fourth section, rates from intermediate points in Idaho should be constructed on a similar basis. We further find that the present grouping and rates from the points involved to North Dakota and Minnesota are unreasonable and unjustly discriminatory and that proper rates for the future shall not exceed: From Bonners Ferry and points on the Great Northern east thereof, to and including Libby, 1 cent per 100 pounds under the Spokane group rates to points on the Pembina-Port Arthur line, defined in the *Potlatch Case, supra*, graded up westwardly to 3 cents under the Spokane group rates at Buford, N. Dak.; from points on the Great Northern in Montana east of Libby, to but not including Stryker, to points on the Pembina-Port Arthur line, 2 cents under the Spokane group rates, graded up westwardly to 4 cents under the Spokane group rates at Buford; from Stryker, Mont., and points on the Great Northern east thereof, to and including Columbia Falls, Mont., to points on the Pembina-Port Arthur line, 3 cents under the Spokane group rates, graded up westwardly to 5 cents under the Spokane group rates at Buford; with the differentials between the rates from these various groups to points on the Pembina-Port Arthur line graded down as the distances eastward in Minnesota increase to Ashby, in the same manner as the differentials between the rates from the present groups into that state are graded.

Complainant does not ask reparation in connection with the rates to North Dakota and Minnesota, and as it has not proved the amount of its damage, if any, caused by the discrimination found to exist in the rates to Montana points, no reparation will be awarded.

An appropriate order will be entered.

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No. 7189.

CURTIS & GARTSIDE COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

FOURTH SECTION APPLICATIONS Nos. 631 AND 461.

Submitted March 1, 1915. Decided February 21, 1916.

Complaint in this case controlled by *Oklahoma Traffic Asso. v. A. & S. Ry. Co.*,
36 I. C. C., 329. Complaint dismissed.

W. V. Hardie for complainants.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company
and Gulf, Colorado & Santa Fe Railway Company.

R. D. Williams for Missouri, Kansas & Texas Railway Company;
Missouri, Kansas & Texas Railway Company of Texas; Galveston,
Harrisburg & San Antonio Railway Company; and Houston & Texas
Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Curtis & Gartside Company, is a corporation engaged in the manufacture, sale, and shipment of sash, doors, and blinds, door and window frames, and woodwork for interior finishing of buildings, with its principal place of business at Oklahoma City, Okla. Complainant, Oklahoma Traffic Association, is a voluntary association of manufacturers, jobbers, shippers, and receivers of freight at Oklahoma City. The complaint, filed August 17, 1914, alleges that the rates on wooden building materials from Oklahoma City to Corpus Christi and other stations in Texas on the Galveston, Harrisburg & San Antonio and the San Antonio & Aransas Pass railways are unreasonable and unjustly discriminatory in comparison with the rates to the same points from Kansas City, Mo., Wichita, Kans., Clinton, Iowa, Shreveport, La., Fort Worth, Tex., and other points. Departures from the rules of the fourth section also are alleged in that higher rates apply from Oklahoma City to Corpus Christi and the other points previously mentioned than from Kansas City and points taking the same rates, including

Wichita, from which Oklahoma City is intermediate to Texas points and that the rates from Oklahoma City exceed the aggregates of the intermediate rates to and from the junction points of the Gulf, Colorado & Santa Fe Railway and the Missouri, Kansas & Texas Railway of Texas with the Galveston, Harrisburg & San Antonio and the San Antonio & Aransas Pass railways. Protective fourth section applications were set for hearing with the complaint to that extent. Reparation is asked on three carload shipments of building materials from Oklahoma City to Corpus Christi, delivered in September, 1912, December, 1912, and January, 1913.

Shortly after the complaint was filed a blanket rate of 23 cents per 100 pounds was proposed by the carriers from Oklahoma City to numerous points in Texas, including all stations on the Galveston, Harrisburg & San Antonio and the San Antonio & Aransas Pass railways. Complainants would be satisfied with this rate except to all stations on the Galveston, Harrisburg & San Antonio and the San Antonio & Aransas Pass between Cameron, Tex., where the Gulf, Colorado & Santa Fe connects with the San Antonio & Aransas Pass, and Flatonia, Tex., where the San Antonio & Aransas Pass connects with the Galveston, Harrisburg & San Antonio, to which they desire a maximum rate of 20 cents. The reparation asked on the shipments to Corpus Christi is based on a rate of 23 cents.

The 23-cent blanket rate referred to was considered in detail in *Oklahoma Traffic Asso. v. A. & S. Ry. Co.*, 36 I. C. C., 329. We found that it had taken effect to some points but not to others, and that it was unreasonable to all points in Texas common-point territory to the extent that it exceeded 21.5 cents. The stations involved here are in Texas common-point territory. The rate thus prescribed eliminates the departures from the rules of the fourth section here involved.

We are not persuaded that the basis of rates prescribed in the *Oklahoma Traffic Asso. case, supra*, should be modified, and for the reasons given in that case the reparation asked here also will be denied. It appears, however, that the shipments on which reparation is asked were overcharged, and defendants should refund the overcharges promptly.

It is unnecessary to duplicate our order in *Oklahoma Traffic Asso. v. A. & S. Ry. Co., supra*, and the complaint will be dismissed.

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No. 7217.
LAMB-FISH LUMBER COMPANY
v.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.

Submitted May 30, 1915. Decided February 21, 1916.

Defendants' rates for the transportation of lumber in carloads from Charleston, Miss., to Mobile, Ala., and Pensacola, Fla., for export, not found to be unreasonable or unjustly discriminatory. Complaint dismissed without prejudice.

George Land for complainant.

William Burger for Louisville & Nashville Railroad Company.

R. V. Fletcher for Yazoo & Mississippi Valley Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture and sale of lumber at Charleston, Miss. By complaint, filed August 28, 1914, it alleges that defendants' rates for the transportation of lumber in carloads from Charleston to Pensacola, Fla., Mobile, Ala., and Gulfport, Miss., for export, are unreasonable and unjustly discriminatory. The allegations against the rates to Gulfport have been abandoned. Reparation is asked on 80 carloads of gum lumber shipped from Charleston to Pensacola for export in April, 1914. The evidence and arguments are confined to rates on cottonwood, gum, and oak, which are hardwoods. All rates herein are stated in cents per 100 pounds.

Charleston is in the hardwood district of Mississippi and is the terminus of the Philipp-Charleston branch of the Yazoo & Mississippi Valley Railroad that extends northward 26 miles from Philipp, Miss., which point in turn is 113 miles south of Memphis, Tenn. Defendants are the Yazoo & Mississippi Valley, the Louisville & Nashville, and the Gulf & Ship Island railroads. The routes formed by their lines from Charleston through Jackson and Gulfport, Miss., to Mobile, 372 miles, and to Pensacola, 476 miles, are the shortest workable routes. No joint through rates were in effect at the time of the hearing and the lowest combination rates over the routes named made on Gulfport. The rates from Charleston to Gulfport were 11

cents on cottonwood and gum and 13 cents on oak. All three kinds of wood took a rate of 7 cents from Gulfport to Mobile and a rate of 12 cents from Gulfport to Pensacola. The combination through rates from Charleston were as follows:

Commodity.	To Mobile.	To Pensacola.
Cottonwood and gum.....	18	23
Oak.....	20	26

The rates to Pensacola include ship-side delivery, but a loading charge of 1 cent per 100 pounds is assessed at Mobile.

Most of the lumber exported by complainant in the past has moved through the port of New Orleans, for the reason, complainant states, that lower rates applied from Charleston to New Orleans than to other ports. A rate of 11 cents applies at present on all hardwood lumber from Charleston to New Orleans for a distance of 326 miles, but a loading charge of 1 cent per 100 pounds is imposed. The 13-cent rate in effect on oak, Charleston to Gulfport, when the complaint was filed has since been reduced to 11 cents. Complainant states further that Memphis dealers are its chief competitors for foreign business and insists that it must have rates from Charleston to Mobile and Pensacola commensurate with the rates to New Orleans and Gulfport if it is to succeed in its competition with Memphis dealers for foreign trade. It appears, however, that by availing themselves of the distress room which tramp steamers offer shippers from Mobile and Pensacola, complainants can secure rates from these points to foreign ports considerably lower than the rates of the regular ocean liners from New Orleans to the same foreign destinations. Mobile and Pensacola are also more desirable ports than New Orleans for complainant's purposes in other respects.

Hardwood from Memphis for export takes a rate of 13 cents to ship side at New Orleans, Mobile, and Pensacola. The 13-cent rate on cottonwood and gum, both from Memphis and Charleston to New Orleans, was established in *Lumber Rates from Memphis to New Orleans*, 27 I. C. C., 471; the 13-cent rate on oak in *Bellgrade Lumber Co. v. I. C. R. R. Co.*, 32 I. C. C., 403. The rate established from Memphis to New Orleans was subsequently established from Memphis to Pensacola and Mobile for competitive reasons, as it is the policy of carriers serving Mobile and Pensacola to meet the rates of the lines to New Orleans.

Complainant introduced numerous exhibits comparing the rates assailed with other rates in the same territory. Rates particularly emphasized are rates ranging from 15 cents to 17 cents on hardwood

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lumber from points on the Chicago, Rock Island & Pacific Railway through Memphis to Mobile and Pensacola for distances ranging from 418 miles to 644 miles over short-line routes. Defendants argue that these rates reflect the policy of carriers interested in the ports of Mobile and Pensacola of making the rates on lumber from Memphis to these ports the same as the rates from Memphis to New Orleans; also that they obviously are depressed far below the normal level and should not be taken as a measure of the reasonableness of the rates in issue. Numerous rates between other points for similar distances in the same territory are cited to prove the rates assailed both reasonable and nondiscriminatory.

Complainant really desires through routes and joint rates from Charleston to Mobile and Pensacola over a direct route, although this desire is not clearly enunciated. Necessary parties defendant also are wanting. A logical route admittedly would be: Yazoo & Mississippi Valley, Illinois Central, and Louisville & Nashville railroads through New Orleans. But the Illinois Central is not made a party defendant. Joint rates are wanted that shall be less than the present combination rates. A rate of 12 cents is suggested on all hardwood lumber. The short route is by way of defendants' lines, but a joint rate over that route would short haul the Yazoo & Mississippi Valley Railroad and might deprive it of its rights under section 15 of the act. The relief desired can not be ordered in this proceeding, but this finding is without prejudice to further action by complainants.

The specific shipments of gum lumber on which reparation is asked moved, as routed by the complainant: Yazoo & Mississippi Valley Railroad from Charleston to Memphis, Louisville & Nashville Railroad from Memphis, through Guthrie, Ky., to Pensacola, a total distance of 868 miles. Charges properly were collected at a combination rate of 19 cents based on Memphis, 6 cents to Memphis and 13 cents beyond. Complainant does not contend that the rate charged was excessive for the route traversed, but insists that a lower joint rate should have been in effect over one of the several more direct routes that were possible. Reparation is asked on the basis of such rate as we may find would have been reasonable over any of the shorter routes. The shortest practicable route lay through Jackson and Gulfport.

There is nothing in the record to show that the rate applicable and charged over the route of movement was unreasonable or unjustly discriminatory, and a finding of damage can not be based on defendants' failure to maintain what complainant considers a reasonable joint rate over some other and more direct routes.

An order will be entered dismissing the complaint.

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No. 7356.
CITY OF STEUBENVILLE, OHIO,
v.
TRI-STATE RAILWAY & ELECTRIC COMPANY ET AL.

Submitted August 11, 1915. Decided March 14, 1916.

Commutation passenger fare of \$8 for 100 rides between Steubenville, Ohio, and Follansbee, W. Va., found unjust and unreasonable, and a maximum fare of \$3.70 for 52 rides prescribed for the future.

F. B. James, E. E. Williamson, R. N. Merryman, and Littleford, James, Ballard & Frost for complainant.

Brookes & Thompson for defendants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complaint in this case was instituted by the City of Steubenville, Ohio, against the Tri-State Railway & Electric Company and the Steubenville, Wellsburg & Weirton Railway Company, hereinafter referred to as the Tri-State Company and the Steubenville Company, respectively, and attacks the one-way and round-trip passenger fares of 10 and 20 cents, respectively, between Steubenville and Follansbee, W. Va., points on the line of the latter company. The complaint was amended at the hearing by adding that, on January 25, 1914, the defendants canceled commutation fares between the two points referred to under which coupon tickets of the value of \$10 were sold for \$8, leaving in effect only the regular one-way and round-trip fares. These fares are alleged to be unjust and unreasonable and to subject the citizens of Steubenville and vicinity to undue prejudice and disadvantage. The Commission is asked to prescribe just and reasonable one-way and round-trip fares, and also just, reasonable, and nondiscriminatory commutation fares.

Steubenville is a town of approximately 25,000 people, situated on the Ohio side of the Ohio River boundary line between Ohio and West Virginia. Follansbee is a small manufacturing town of approximately 4,000 people, situated 2.9 miles from Steubenville, on the West Virginia side of the river. Many employees of the Follansbee plants live in Steubenville and go on the cars of the Steubenville Company to and from their work. The regular one-way and

round-trip fares between these points have always been 10 and 20 cents, respectively, but, as stated, prior to January 25, 1914, coupon tickets for 100 rides, of the value of \$10, were sold for \$8, making the net one-way and round-trip fares 8 and 16 cents, respectively. These coupon tickets were issued by the Tri-State Company, but were adopted and honored by the Steubenville Company, and were unlimited as to time and could be used by anyone.

Effective March 14, 1915, after the first hearing in the case, the Steubenville Company resumed the sale of 100-ride coupon tickets at the same price and on the same conditions as existed prior to January 25, 1914. While the cancellation of the commutation fare was the primary cause of the complaint herein, the city council of Steubenville was of the opinion that \$8 was too much for the average workingman to invest in transportation at one time. The company thereupon offered, and is still willing, to place on sale a 50-ride coupon ticket of the value of \$5 for \$4, and also a monthly ticket of 54 rides for \$4.25. A committee of the council rejected this offer and made a counter proposition that the company issue a 14-ride ticket for \$1. This the company refused to do, and shortly thereafter this complaint was filed.

The Tri-State Company was organized for the purpose, among other things, of securing, by lease or otherwise, interests in a number of electrically operated railroads, including the Steubenville Company, which, linked together, would extend from the Beaver Valley in Pennsylvania through Ohio and West Virginia to Wheeling, W. Va. The venture proved to be a failure; the Tri-State Company became insolvent and was placed in the hands of a receiver. As a result of the receivership the Steubenville Company was turned back to its stockholders and is now being operated as an independent company. The Tri-State Company also controlled 1,600 feet of track along Market street in Steubenville, which is used by the Steubenville Company. The Tri-State Company has been dispossessed of this track by foreclosure proceedings; consequently, as the matter now stands, the Steubenville Company is the only real defendant in this case.

The Steubenville Company was incorporated under the laws of West Virginia as a railroad. It has exercised the power of eminent domain. It owns 11.5 miles of single-track railroad, extending from Wellsburg along the West Virginia bank of the Ohio River through Follansbee to the town of Weirton. To reach Steubenville it operates across a bridge owned by the Steubenville Bridge Company, hereinafter referred to as the bridge company, for a distance of about 1,800 feet, and over the 1,600 feet of track in Market street above referred to. From the West Virginia side of the bridge

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to Wellsburg the road was constructed along the side of a precipitous hill and through open fields. A branch was later constructed north from the West Virginia side of the bridge to a point which has since become the town of Weirton. Follansbee was not in existence when the road was built. The Steubenville Company transports nothing but passengers, although its charter seems to give it authority to handle freight. It is subject to the provisions of the act to regulate commerce. *Jurisdiction over Urban Electric Lines*, 33 I. C. C., 536, 539.

One of the principal contentions made by complainant to show that the rates attacked are unjust and unreasonable is that the resources of the Steubenville Company are being drained by its intercorporate relationship with affiliated companies. To state this proposition more in detail, it is urged that interest is paid on an excessive bonded indebtedness placed upon the company by the Tri-State Company; that an excessive bridge toll is paid to the bridge company, which the Steubenville Company controls; that an excessive track rental is paid to the owners of the Market street track, formerly owned by the Tri-State Company; that the Steubenville Company purchases its electric power from a nonproducing affiliated company rather than from producing companies direct; and that, as a result of these arrangements, the fares attacked are unjust and unreasonable.

The promoters of the Tri-State purchased the property of the Steubenville Company, including the construction of the Weirton branch, for \$100,000 cash and \$700,000 in first mortgage 5 per cent bonds. Immediately after this purchase the capital stock of the company was increased to \$1,300,000. The road was built in 1904 by a group of seven men, one of whom testified as a witness for complainant. According to the testimony of this witness, which was based largely upon recollection, the railroad from the West Virginia side of the bridge to Wellsburg cost \$313,000; an extension of 1½ miles in Wellsburg cost \$43,000; the Weirton branch from the West Virginia side of the bridge to a point called Crawfords Crossing, exclusive of overhead construction, cost \$100,000; repairing the damage done by two earth slides cost \$45,000; or a total of these items of \$501,000. Complainants object to the inclusion of the latter item, contending that it is included in the first item, but the record is reasonably clear that these slides took place some time after the original road was built.

In this connection defendant contends that an item of approximately \$100,000, its contribution to the cost of a curbed wagon road about 3,500 feet in length along the railroad between the West Virginia side of the bridge and Follansbee, should be included in any

statement of original cost. While the railroad derived benefit in the way of drainage from the construction of this road, the record indicates that it was not built entirely for that purpose. The old wagon road along the river bank frequently became impassable on account of high water. One of the builders of the railroad had options on considerable land in and around what is now Follansbee and was interested in making the future town as accessible as possible to Steubenville. The remainder of the cost of the roadway was contributed by the county and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, the latter's contribution being based on its desire to eliminate certain grade crossings incident to the old road. While the Steubenville Company has no right, title, or interest in this roadway, a reasonable portion, and perhaps all of its contribution to the cost thereof, might properly be included in the cost of the Steubenville Company for the reason that, if the roadway had not been built, other steps would have been necessary to protect the railroad.

In addition to the above items, there has been expended on the property in additions and betterments, including overhead work on the Weirton branch and its extension from Crawfords Crossing to Weirton proper, a total of \$102,011.54. The record is reasonably clear that these additions and betterments were made partly out of earnings and partly with borrowed money. The aggregate of these items makes the claimed cost of the railroad as it now stands \$703,011.54, or approximately \$61,130 per mile. The use in this report of these figures of cost of road is not to be understood as any finding that they represent either the true cost or present value of the road.

The gross earnings of the company for the year ended December 31, 1914, were \$144,246, which includes dividends of \$8,320 received from its investment in the bridge company. The total operating expenses, taxes, and interest on current liabilities, for the same period, were \$107,067.99, which includes \$24,763.93 paid to the bridge company for tolls and to the owners of the Market street track for track rental. The difference between these total figures, as representing net income for the period named, is \$37,180.01, equal to about 5.29 per cent on the above claimed cost of the road as of December 31, 1914.

The Steubenville Company pays the bridge company a toll of 2.5 cents per passenger for the use of the bridge. The Steubenville Company controls the bridge company by ownership of 52 per cent of its capital stock. This bridge is a steel structure and was built in 1902-1904 at a cost of \$275,000, represented by a paid-up capital

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stock of \$50,000, \$200,000 in first mortgage 5 per cent bonds, and \$25,000 cash paid out of earnings during the first four years of its operation. During the year ended December 31, 1914, it earned, including a balance of \$1,573.03 on hand December 31, 1913, a total of \$34,579.74, approximately two-thirds of which represented tolls paid by the Steubenville Company. After paying the interest on the bonds, taxes, and all other expenses, including insurance for three years and repainting the structure, there was available for dividends \$19,082.61, equal to 38 per cent on the capital stock. A dividend of 32 per cent was paid, leaving a balance of \$3,082.61 in the treasury. The earnings in 1914 were equal to 10.4 per cent on the cost of the property. While nothing has been charged off for depreciation, the bridge seems to be maintained in first-class condition.

The general manager of the Steubenville Company, who has had considerable experience in operating electric railroads, testified that in his opinion a reasonable toll for crossing the Steubenville bridge would be 1.5 cents per passenger, and that he had endeavored on two or three occasions to secure a reduction to that basis. It might be added in this connection that the present agreement, whereby the bridge company is paid 2.5 cents per passenger, is a verbal one, and, consequently, as the Steubenville Company controls the bridge company, the toll may be reduced at the discretion of the Steubenville Company.

The Steubenville Company pays 30 cents per car-mile for the use of the Market street track. This track was laid by the original builders of the Steubenville Company at a cost of \$7,000, and later became the property of the Tri-State Company, which also controlled the Steubenville Company. During its control of the latter company the Tri-State Company made a verbal arrangement whereby it charged the Steubenville Company 30 cents per car-mile for the use of the track, which amounts to about \$215 per month, or about \$2,580 per year. Other roads formerly controlled by the Tri-State Company also use this track. The annual report of the Tri-State Company to this Commission shows that its actual receipts from the rent of the track for the year ended June 30, 1914, amounted to \$2,639.60, thus indicating that almost all of the revenue from the track came from the Steubenville Company. This report also shows that the Tri-State Company had no operating expenses for that year, but that it paid out in taxes on real and personal property a total of \$1,965.53. What part of these taxes is properly chargeable against the track can not be determined from the record, but as the Tri-State Company reported to the Ohio tax commission for the year ended December 31, 1914, a total of \$124,347.42 in personal property, it

should be a comparatively small part. Under all the circumstances it would appear that the track rental could be reduced without depriving its owners of a fair return upon its value.

The Steubenville Company does not purchase its power direct from the producing companies, but from the Wellsburg Light, Heat & Power Company, a nonproducing company formerly controlled by the Tri-State Company. The record shows that the Wellsburg Company makes a profit out of its transactions with the Steubenville Company, and the general manager of the latter company was unable to explain why that company did not purchase its power direct from the producing companies instead of through a subsidiary of the Tri-State Company.

No estimate can be made as to the amount the Steubenville Company would save if it purchased its power direct from the producing companies, but if the bridge toll paid to the bridge company were reduced to 1.5 cents per passenger and the rental paid to the owners of the Market street track were reduced in the same proportion the operating expenses of the company on the basis of the figures for 1914 would be \$97,162.42. If the dividends which the Steubenville Company secured from the bridge company were reduced in the same proportion, the gross earnings of the railway on the basis of the figures for 1914 would be \$140,918. The difference between \$140,918 and \$97,162.42 would represent net earnings of \$43,755.58, which is equal to 6.22 per cent on the above claimed cost of the road to December 31, 1914. To express it another way, the interest on the present bond issue of \$700,000 could be paid, leaving 8.7 per cent on \$100,000, which, with the bonds, represented the value of the road to the promoters of the Tri-State Company when they purchased it.

While the above facts and figures relative to the cost, earnings, and operating expenses of the Steubenville Company are interesting as showing that the company has suffered from its relations with affiliated companies and that it is in position to make better arrangements with respect to the matters specifically referred to, they do not furnish the sole standard from which to determine what are just and reasonable fares between Steubenville and Follansbee. Complainant submits comparisons with other fares between points on defendant's line and with the fare between Steubenville and Follansbee via the Pittsburgh, Cincinnati, Chicago & St. Louis Railway to show that the present fares charged by defendant are unjust and unreasonable.

The 30 cents per car-mile which defendant pays for the use of the 1,600 feet of track in Market street amounts to approximately one-fourth of a cent per passenger, which, added to 2.5 cents per passenger for the use of the bridge, makes a total deduction of 2.75 cents

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per passenger. In the following table this amount has been deducted from the Steubenville-Follansbee and Steubenville-Weirton fares in order to compare the net earnings per passenger:

	Miles.	Net earnings per passenger.	Net passenger-mile earnings.
Steubenville-Follansbee:			
Single fare.....			
Present.....	2.9	\$0.0725	\$0.025
If bridge toll and track rental reduced 40 per cent.....	2.9	.0835	.029
Commutation fare.....			
Present.....	2.9	.0525	.018
If bridge toll and track rental reduced 40 per cent.....	2.9	.0635	.022
Proposed: \$1 book of 14 tickets with present deductions.....	2.9	.0439	.015
If bridge toll and track rental reduced 40 per cent.....	2.9	.0549	.019
Steubenville-Weirton:			
Single fare.....			
Present.....	5.7	.0725	.013
If bridge toll and track rental reduced 40 per cent.....	5.7	.0835	.015
Commutation fare.....			
Present.....	5.7	.0525	.009
If bridge toll and track rental reduced 40 per cent.....	5.7	.0635	.011
Wellsburg-Follansbee: Single fare.....	4.4	.05	.011

It will be noted from the above table that the net earnings per passenger for the 2.9 miles between Steubenville and Follansbee are the same as for the 5.7 miles between Steubenville and Weirton, and greater than for the 4.4 miles between Follansbee and Wellsburg. It will be further noted that the net earnings from a \$1 ticket for 14 rides between Steubenville and Follansbee would not compare unfavorably with the net earnings between the other points shown.

The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company has a branch line running between Steubenville and Follansbee. The distance via this line is 4.4 miles, and it sells monthly 54-ride commutation tickets for \$3.25, or a net one-way fare of about 6 cents. The train schedules of this line, however, are such that the employees of the industrial plants at Follansbee can not avail themselves of the service.

Upon consideration of all the facts of record it is the finding and conclusion of the Commission that defendant's charge of \$8 for 100 rides between Steubenville and Follansbee is unjust and unreasonable, and that a reasonable maximum charge for the commutation service between said points would not exceed \$3.70 for 52 rides. The record does not warrant a finding that the one-way or round-trip fares are unreasonable.

An appropriate order will be entered.

38 I. C. C.

No. 7436.

WEINSTOCK-NICHOLS COMPANY ET AL.

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted May 15, 1915. Decided February 21, 1916.

Present rating and rates applied by defendants for the transportation of carburetors in less than carloads from Chicago, Ill., and Indianapolis, Ind., to San Francisco and Los Angeles, Cal., Portland, Oreg., and Seattle, Wash., found to be unreasonable.

J. O. Bracken for complainants.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The complainants are corporations engaged in the automobile supply business at San Francisco, Cal., and Portland, Oreg. By complaint, filed October 28, 1914, they allege that the one and one-half times first-class rating and rates applied by defendants on carburetors in less than carloads from Chicago, Ill., and Indianapolis, Ind., to San Francisco and Los Angeles, Cal., Portland, Oreg., and Seattle, Wash., are unreasonable and unduly prejudicial. The rate of \$2 per 100 pounds applicable to brass valves is suggested as reasonable for carburetors except where greater than the current first-class rates. The suggestion of the rate applicable on brass valves was withdrawn at the hearing because of its cancellation.

Shipments of carburetors from and to the points involved are governed by the western classification. During the period from October 15, 1907, to February 14, 1913, this classification rated carburetors first class. On February 14, 1913, the rating was increased to one and one-half times first class. Prior to June 15, 1912, the first-class rate from Chicago and Indianapolis to all of the points of destination involved was \$3 per 100 pounds. On June 15, 1912, the first-class rate from Chicago to these destinations was increased to \$3.40; the rate from Indianapolis to \$3.50; which rates are still in effect. The present one and one-half times first-class rates, therefore, are \$5.10 from Chicago and \$5.25 from Indianapolis.

A carburetor is an essential part of a gas engine. It is the device employed for mixing the gasoline with air in the proportions neces-

sary to form the so-called charge, which is sucked into the cylinders of the engine and there exploded by an electric spark. Complainants show that other parts of gasoline engines, principally generators, magnetos, and spark plugs, are rated first class and take first-class rates. The testimony offered relates principally to the values of these various parts and their weights per cubic foot, as follows:

	Value per cubic foot.	Weight per cubic foot.	Value per pound.
		<i>Pounds.</i>	<i>Cents.</i>
Carburetors.....	\$24.89	28.7	86½
Generators.....	52.10	60.9	85
Spark plugs.....	31.25	52.5	60
Magnetos.....	34.86	28.4	125

Defendants insist that when carburetors were rated first class they were stated to be brass valves worth about \$3 each, but later appeared to be worth from \$23 to \$49 each, and to average from 27 pounds to 44 pounds per cubic foot, so that their average value is about \$1.76 per pound. The average value of generators and magnetos is said to be less, but no convincing testimony was offered to refute the figures given by complainants relative to the value of generators, magnetos, and spark plugs, and the increased first-class rates were made sufficiently high to cover the real value of carburetors.

Magnetos and spark plugs apparently are more delicate pieces of machinery than carburetors and are more liable to damage in transit. Small carburetors are shipped separately packed in cardboard cartons in wooden boxes. The larger carburetors are shipped packed with excelsior in wooden boxes. Complainants state that no claims for damage to carburetors in transit have been made by them.

The rating and rates assailed represent increases subsequently to January 1, 1910, and defendants had the burden of justifying them. We find that this burden has not been sustained and that for the future any rating or rates on carburetors in less than carloads from Chicago, Ill., and Indianapolis, Ind., to San Francisco and Los Angeles, Cal., Portland, Oreg., and Seattle, Wash., in excess of first class will be unreasonable.

An order will be entered accordingly.

No. 7450.

PILLSBURY FLOUR MILLS COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 461.

Submitted January 19, 1915. Decided February 21, 1916.

Rate of 35 cents per 100 pounds, minimum 40,000 pounds, charged for the transportation of one car of flour from Minneapolis, Minn., to Alexandria, La., found to have been unreasonable. Reparation awarded.

A. B. Loth for complainant.

R. G. Brown for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of flour and other grain products at Minneapolis, Minn. By complaint, filed October 30, 1914, it alleges that defendants' joint rate of 35 cents per 100 pounds subject to a minimum weight of 40,000 pounds charged for the transportation of one carload of flour from Minneapolis, Minn., to Alexandria, La., on August 25, 1914, was unjust and unreasonable to the extent that it exceeded the aggregate of intermediate rates to and from St. Louis contemporaneously in effect at the lower minimum weight applicable thereto. Reparation is asked.

The shipment moved from Minneapolis to Alexandria over lines of the Chicago, Rock Island & Pacific Railway, the Chicago, Rock Island & Gulf Railway, and the Texas & Pacific Railway, routed by the shipper "C. R. I. & P., T. & P. dely." The Chicago, Rock Island & Pacific Railway assumed the defense, and is hereinafter called defendant. The shipment weighed 31,280 pounds, and charges were collected in the sum of \$140, based on a joint rate of 35 cents, subject to a minimum weight of 40,000 pounds. Complainant contends that the shipment was misrouted in that defendant failed to forward it over the cheapest available route permitted by the bill of lading routing. A combination rate of 41 cents per 100 pounds subject to a minimum weight of 30,000 pounds was contemporaneously in

effect by way of St. Louis: 16 cents to St. Louis and 25 cents beyond. Texas & Pacific delivery could have been effected if the shipment had moved through St. Louis and thence over the St. Louis, Iron Mountain & Southern Railway. That portion of agent Leland's Fourth Section Application No. 461 which seeks authority to continue rates on flour from Minneapolis, Minn., to Alexandria, La., which are higher than the aggregate of the intermediate rates to and from St. Louis, Mo., was heard with the complaint.

Tariffs in our files disclose a combination rate of 39 cents per 100 pounds, minimum weight 30,000 pounds, contemporaneously applicable over the route of movement, composed of a rate of 14 cents to Kansas City and a rate of 25 cents beyond. But this departure from the aggregate of intermediate rates rule of the fourth section of the act was protected by an appropriate application which was not set for hearing with the complaint. An increase in the minimum weight on grain products in the territory involved from 30,000 pounds to 40,000 pounds was authorized in *The 1915 Western Rate Advance Case*, 35 I. C. C., 497, and effective September 30, 1915, the situation was rectified.

We find that the charges assailed were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the aggregate of intermediate rates contemporaneously in effect to and from Kansas City; that complainant made the shipment involved as described and paid and bore charges thereon at the rate and minimum herein found unreasonable; that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate and minimum herein found reasonable, and that it is entitled to reparation in the sum of \$18.01, with interest from September 17, 1914.

No justification was offered for the fourth section relief asked in the application heard; however, the increase permitted in minimum weights, previously alluded to, works a correction of the situation.

Appropriate order awarding reparation will be entered.

38 I. C. C.

No. 7571.
MORELAND MOTOR TRUCK COMPANY
v.
**SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD
COMPANY ET AL.**

Submitted May 25, 1915. Decided February 21, 1916.

Rate established by defendants for the transportation of wooden motor truck wheels, without hubs, in carloads, from Newark, N. J., and Jackson and Lansing, Mich., to Los Angeles, Cal., found to have been unreasonable to the extent that it exceeded the rate contemporaneously applicable to wagon wheels in the white, ironed or not ironed, which rate is prescribed as maximum for the future, subject to a minimum weight of 30,000 pounds.

J. E. Helpling and *O. T. Helpling* for complainant.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

T. J. Norton and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company and San Pedro, Los Angeles & Salt Lake Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of motor trucks at Los Angeles, Cal. By complaint, filed December 12, 1914, it alleges that the rates charged by defendants for the transportation of motor truck wheels and parts thereof to Los Angeles from Newark, N. J., and Jackson and Lansing, Mich., were unjust and unreasonable. Reparation is asked, and the establishment of reasonable rates for the future. The complaint was amended to exclude "and parts thereof."

Shipments of wooden motor truck wheels in the white are involved: One carload shipment from Jackson delivered more than two years before the complaint was filed; another from Newark, in April, 1913; one less-than-carload shipment from Newark, in March, 1914; others from Jackson and Lansing during the period from January, 1913, to March, 1914. Charges were collected on the carload shipment from Newark in the sum of \$362.88, at a commodity carload rate of \$3 per 100 pounds, provided for "automobiles,

passenger and freight, and extra parts, finished or unfinished, minimum 12,000 pounds," subject to rule 6-B of the western classification. The shipment weighed 12,096 pounds. A commodity carload rate of \$2.20 per 100 pounds applied from all of the points of origin involved to Los Angeles on "automobile wheels," wooden, in the white, ironed or not ironed, minimum 24,000 pounds. The less-than-carload shipments properly were charged for at the first-class rates provided for self-propelling vehicle "wheels in the white, without tires." The first-class rates to Los Angeles were \$3.70 per 100 pounds from Newark and \$3.50 from Jackson and Lansing.

Complainant contends that a reasonable rate on carload shipments from all of the points of origin involved to Los Angeles would not exceed \$1.25 per 100 pounds, the rate applicable to wagon wheels "in the white, ironed or not ironed." Wagon wheels in carloads take a minimum of 24,000 pounds, but complainant is willing to accept a minimum weight of 30,000 pounds on motor truck wheels. A rate of \$1.75 per 100 pounds is suggested as reasonable for less-than-carload shipments, although there are no commodity rates applicable to wagon wheels in the white in less than carloads, and only the first-class rates apply.

Complainant shows that motor truck wheels of the kind involved are made of substantially the same material as wagon wheels; that they are fairly comparable to wagon wheels in value, and that they load more heavily because shipped without hubs. Complainant procures its hubs at Los Angeles, where hubs are manufactured. It is stated that some unfinished wooden motor truck wheels resemble wagon wheels so closely that it is difficult to distinguish them and that some heavy wagon wheels can be used on motor trucks. Defendants admit that the transportation conditions for motor truck wheels and for wagon wheels are similar.

We find upon all of the facts of record that the less-than-carload rates in issue are not shown to have been unreasonable, but that the carload rates on wooden motor truck wheels without hubs were and are unreasonable to the extent that they exceeded and exceed the rates contemporaneously applicable to wagon wheels in the white, ironed or not ironed, subject to a minimum weight not in excess of 30,000 pounds. Charges on this basis on the carload shipment from Newark would have been greater than the charges actually collected. The claim as to the carload shipment from Jackson is barred.

An order will be entered accordingly.

38 I. C. C.

No. 7676.

E. J. JOHNSON

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted May 29, 1915. Decided February 21, 1916.

Defendant's rule under which tickets for transportation on the "California Limited" train from Chicago, Ill., to Albuquerque, N. Mex., were not honored, and the assessment of charges for transportation on this train from Chicago to Albuquerque on the basis of the fare from Chicago to Williams, Ariz., the first point west of Albuquerque to which tickets were honored on this train, not found to have been unjustly discriminatory. Complaint dismissed.

Vigil & Jamison and *F. C. Wilson* for complainant.

T. J. Norton, W. C. Reid, R. T. Twitchell, and F. E. Andrews for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant, a resident of Worcester, Mass., by complaint, filed January 18, 1915, alleges that defendant's rule under which tickets for the transportation of passengers from Chicago, Ill., to Albuquerque, N. Mex., were not honored for travel on the "California Limited" train was unjustly discriminatory. Refund is asked for the unused portions of two passenger tickets from Chicago to Williams, Ariz., on the basis of the difference between the fares from Chicago to Williams and from Chicago to Albuquerque, where complainant left the train.

Complainant contemplated a trip with his wife to San Diego, Cal., with a stop-off of several weeks at Albuquerque. On July 1, 1913, he applied to defendant's agent at Boston, Mass., for two tickets and Pullman reservations for travel on July 12, 1913, from Chicago to Albuquerque on a train known as the "California Limited," operated by the defendant between Chicago and the Pacific coast. Defendant had a rule in effect, published in its time-tables but not in its tariffs, as follows:

Reservations of space will not be made on this train (the California Limited) to points east of Williams, Ariz., with the exception of a few berths that may be used from Chicago to Kansas City.

Complainant was informed of the rule and accordingly purchased two tickets and Pullman accommodations on the "California Lim-

ited" from Chicago to Williams, Ariz., 378 miles west of Albuquerque. He left Chicago with his wife on defendant's train on July 12, 1913. They left the train at Albuquerque and complainant later filed a claim with defendant for refund of \$30.30, the difference between two fares from Chicago to Albuquerque and from Chicago to Williams. The claim was denied. Complainant and his wife continued their journey over defendant's line to San Diego on September 18, 1913. Before leaving Albuquerque complainant applied to defendant's agent for two tickets from Albuquerque to San Diego on the basis of the fare from Williams to San Diego, and upon the refusal of the agent to comply with the request purchased the tickets at the regular published fare from Albuquerque.

Complainant contends that defendant's rule prohibiting the sale of tickets from Chicago to Albuquerque good on the "California Limited" unjustly discriminated against Albuquerque and in favor of other points, principally Williams and Ash Fork, Ariz., 23 miles west of Williams. Complainant does not question the propriety of carriers limiting passenger train service to certain stations, but points out that Albuquerque has a larger population than either Williams or Ash Fork and is the junction point for defendant's line to El Paso. Complainant also contends that it would not have been a violation of the rule to have permitted him to purchase tickets for transportation from Albuquerque to San Diego on the basis asked, for the reason that passengers on the limited were allowed stop-over privileges at Albuquerque. But the stop-over allowed at Albuquerque was limited to 10 days, whereas complainant stopped over at Albuquerque for more than two months.

Defendant states that its rule was designed to reserve the "California Limited," which was and is advertised extensively as a transcontinental train, for the through California traffic for which it was intended. Practically all passengers carried on this train to Williams, which is the junction point for defendant's line to the Grand Canyon, are said to travel to the Grand Canyon and later to resume their journey on the limited. Ash Fork is much nearer California than Albuquerque is, and is the junction point for defendant's line to Prescott and Phoenix, Ariz. Much of the space on the limited that would otherwise be unoccupied is utilized by passengers going to such points. Defendant insists that this train is necessary to meet the competition of other lines, and that to honor tickets to Albuquerque on it would strip it of its character as a first-class limited transcontinental train and would reduce the revenue necessary to maintain it. Three other first-class trains are operated daily between Chicago and Albuquerque to accommodate local traffic. Subsequently to July, 1913, the rule was changed to permit the sale

of tickets for transportation on the "California Limited" from Chicago to Albuquerque if applied for within four hours of the time of departure of the train.

The reasonableness of a similar rule, published in a tariff of the New York Central & Hudson River Railroad, was considered by us in *Kennedy v. N. Y. C. & H. R. R. Co.*, Docket No. 6178. In that case we held that the refusal of the defendants therein to make refund on the unused portion of a passenger ticket for transportation on an extra-fare train, the "Twentieth Century Limited," from New York, N. Y., to Chicago, Ill., on the basis of the fare to Syracuse, N. Y., where complainant left the train but to which point tickets were not available, was not unreasonable. Reparation was awarded, however, on the basis of the fare to Elkhart, Ind., the nearest point intermediate to Chicago to which tickets on this train were sold. In the proceeding now before us the tickets originally were sold to the first point beyond the station where complainant left the train to which defendant permitted their sale, and upon all the facts of record we find that the rule assailed is not shown to have been unjustly discriminatory.

An order dismissing the complaint will be entered.

DANIELS and HALL, *Commissioners*, dissent.

No. 7727.

McCAULL-DINSMORE COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 296.

Submitted September 13, 1915. Decided February 21, 1916.

1. Charges collected for the transportation of a carload of shelled corn from Sioux Center, Iowa, to St. Joseph, Mo., found not illegal. Complaint dismissed.
2. That portion of Fourth Section Application No. 296, filed by the Chicago, Burlington & Quincy Railroad Company, which asks authority to continue rates on shelled corn from St. Paul, Minn., to St. Joseph, Mo., lower than rates contemporaneously maintained from Sioux Center and other intermediate points, denied.

S. J. McCaull for complainant.

J. F. Finerty for Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the purchase and sale of grain at Minneapolis, Minn. By complaint, filed February 5, 1915, it alleges that the rate charged by defendants for the transportation of a carload of shelled corn shipped November 21, 1913, from Sioux Center, Iowa, to St. Joseph, Mo., was unreasonable and unlawful. Reparation is asked.

The shipment moved to Sioux City over the Great Northern Railway and thence to St. Joseph over the Chicago, Burlington & Quincy Railroad. Charges were collected at a commodity rate of 15½ cents per 100 pounds, established October 25, 1909. The bill of lading contained the following instructions: "Route via G. N. and C. B. & Q." After the car had been delivered at St. Joseph and the transportation completed it was forwarded, for reasons unknown to complainant, to Kansas City, Mo., by way of the Burlington. A joint rate of 13¼ cents per 100 pounds applied from St. Paul to St. Joseph and Kansas City, by way of the Great Northern and the Burlington. Sioux Center is an intermediate point from St. Paul, but the rate from St. Paul was not applicable from intermediate points.

Complainant's contention is that the legal tariff rate was 13½ cents, and no evidence was submitted to prove the allegation that the rate charged was unreasonable. A rate of 13½ cents also applied from St. Paul to Kansas City by way of defendants' lines in connection with the Atchison, Topeka & Santa Fe Railway from St. Joseph to Kansas City. The tariff naming this rate was published by the Santa Fe and provided for the intermediate application of the St. Paul rate from points on the Great Northern, including Sioux Center. But the Santa Fe did not participate in the transportation and its tariff had no application. In *Grain Rates from St. Paul, Minn.*, 32 I. C. C., 96, we permitted the cancellation of joint rates on grain from stations on the Great Northern in Minnesota and Iowa to Kansas City and the application instead of the aggregates of intermediate rates. Effective December 5, 1913, the rate from St. Paul to St. Joseph was increased to 14½ cents.

That portion of Fourth Section Application No. 296 filed by the Chicago, Burlington & Quincy Railroad Company which seeks authority to continue rates on shelled corn from St. Paul, Minn., to St. Joseph, Mo., lower than the rates contemporaneously maintained from Sioux Center and other intermediate points was heard with the complaint. The short-line distance from St. Paul to St. Joseph is, by the Chicago, Rock Island & Pacific Railway, 463 miles. The distance by the Chicago & Great Western Railway is 468 miles. The distance by defendants' lines is 582 miles. The distance by defendants' lines from Sioux Center to St. Joseph is 300 miles.

We find that the rate assailed was not in excess of the rate legally applicable, and the complaint will be dismissed. The fourth section relief will be denied.

Appropriate orders will be entered.

DANIELS and HALL, *Commissioners*, dissent.

38 I. C. C.

No. 7840.
WILLIAM H. SHEETS
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted October 5, 1915. Decided February 21, 1916.

Rate charged by defendant for the transportation of logs in carloads from Ansley, Lake Shore, and Waveland, Miss., to New Orleans, La., found to have been unreasonable to the extent that it exceeded the rate contemporaneously maintained on piles and telephone poles. Reparation awarded.

C. H. Osterberger for complainant.

E. D. Mohr for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in logs and piles at New Orleans, La. By complaint, filed March 18, 1915, he alleges that the rate of 5.5 cents per 100 pounds charged by defendant for the transportation of 26 carloads of logs from Ansley, Lake Shore, and Waveland, Miss., to New Orleans, between March 19, 1913, and April 4, 1913, was unreasonable, unjustly discriminatory, and in violation of section 4 of the act. Reparation is asked.

Ansley, Lake Shore, and Waveland are local stations on defendant's line between Pascagoula, Miss., and New Orleans, Ansley 41 miles from New Orleans, Lake Shore 44 miles, Waveland 48 miles. The shipments moved over defendant's line at the 5.5-cent rate assailed. A rate of 3 cents per 100 pounds applied from and to the same points on piles and telephone poles in carloads, which rate is still in effect. Complainant contends that logs are similar to piles and telephone poles, and should not be charged any higher rates.

Logs intended for conversion into lumber are similar to the logs intended for piles, except that the latter are usually longer and of less diameter, and it is testified that it was necessary in some cases for the railroad officials to know the use to which the logs were to be put before the rate to be charged could be determined. Defendant admits that the rate charged was unreasonable and unjustly discriminatory as compared with the rate applicable on piles and telephone poles, and is willing to make reparation.

Prior to August 25, 1915, defendant maintained a carload rate of 4.5 cents per 100 pounds from Pascagoula to New Orleans, on logs from the Pascagoula River, which rate was canceled on that date, when a rate of 5.5 cents became effective. This rate, which still applies, conforms to the requirements of the fourth section. The former departure from the rules of the fourth section was protected by an appropriate fourth section application.

We find that the 5.5-cent rate charged was and for the future will be unreasonable and unjustly discriminatory to the extent that it exceeded and exceeds the rate contemporaneously maintained by defendant on piles and telephone poles from and to the points involved; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that he is entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record. Complainant, accordingly, should prepare a statement showing as to each of the shipments on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared by complainant and verified by defendant, we will consider further issuing an order awarding reparation.

An appropriate order will be entered.

38 I. C. C.

No. 7876.¹
STANDARD LUMBER COMPANY
v.
SOUTH GEORGIA RAILWAY COMPANY ET AL.

Submitted November 6, 1915. Decided February 21, 1916.

1. Carload rate of 15.2 cents per 100 pounds on lumber from Baden, Ga., to Columbia, S. C., found to have been unreasonable to the extent that it exceeded the aggregate of intermediate rates based on Savannah, Ga.
2. Carload rate of 20 cents per 100 pounds on lumber from Shore, Ga., to Anderson, S. C., found to have been unreasonable to the extent that it exceeded the aggregate of intermediate rates based on Augusta, Ga.
3. Depression of an intermediate rate by rail competition does not justify a joint rate in excess of the aggregate of the intermediate rates.
4. Reparation awarded.

J. T. Slatter for complainant.

M. P. Callaway for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business, with its principal place of business at Birmingham, Ala. By complaints, filed April 1, 1915, and April 12, 1915, it alleges that the through rates charged by defendants for the transportation of carload shipments of lumber from Baden, Ga., to Columbia, S. C., and from Shore, Ga., to Anderson, S. C., in November, 1913, and January, 1914, were unreasonable and in excess of the aggregates of the intermediate rates to and from Augusta, Ga. Reparation is asked and reasonable rates for the future. The two cases were heard together and will be disposed of in one report.

Baden and Shore are local points on the South Georgia Railway, south of Quitman, Ga. Baden is 4 miles south of Quitman, Shore about 9 miles. The South Georgia extends north through Quitman to Adel, where it connects with the direct line of the Georgia & Florida Railway to Augusta, which in turn connects at Augusta with the line of the Charleston & Western Carolina Railway from Port Royal, S. C., north through Yemassee, S. C., and Augusta to Anderson, and with the line of the Southern Railway from Augusta to Columbia. Defendant Atlantic Coast Line Railroad has a line

¹ The proceeding also embraces complaint in No. 7911, Same *v.* South Georgia Railway Company.

from Montgomery, Ala., through Quitman, Savannah, and Yemassee to Columbia, connecting with the Charleston & Western Carolina at Yemassee and with the direct line of the Seaboard Air Line Railway from Savannah to Columbia and the less direct line of the Southern from Savannah to Columbia at Savannah. Columbia is 428 miles from Baden by way of Savannah and Yemassee, 320 miles by way of Savannah and the Seaboard Air Line, 324 miles by way of Adel and Augusta. Anderson is 427 miles from Shore by way of Savannah, Yemassee, and Augusta; 347 miles by way of Adel and Augusta.

No. 7876 involves a single carload of lumber shipped January 31, 1914, from Baden to Columbia. The carriers' routing is not shown definitely, but apparently was South Georgia to Quitman, Atlantic Coast Line from Quitman through Savannah to Columbia. Charges were collected in the sum of \$55.94 on 36,800 pounds of lumber, at a rate of 15.2 cents per 100 pounds. The complaint alleges that the intermediate rates to and from Augusta aggregated only 13.5 cents. The allegation is erroneous. The rate in effect from Baden to Augusta was 10.5 cents, the rate from Augusta to Columbia 5.75 cents, making an aggregate of 16.25 cents. But the rate charged did exceed the aggregate of the rates to and from Savannah. A rate of 8.33 cents, applicable to interstate transportation, applied from Baden to Savannah and a rate of 6 cents from Savannah to Columbia, making an aggregate of 14.33 cents. This discrepancy was covered by an appropriate fourth section application, which was not set for hearing with the complaint for the reason that the complaint does not mention the Savannah combination, but, effective April 10, 1914, the through rate from Baden to Columbia was reduced to 14 cents.

We find that the 15.2-cent rate assailed was unreasonable to the extent that it exceeded the aggregate of the intermediate rates applicable to and from Savannah.

No. 7911 involves a single carload of lumber moved November 24, 1913, from Shore to Anderson, by the South Georgia Railway to Quitman, by the Atlantic Coast Line thence to Yemassee, and by the Charleston & Western Carolina thence through Augusta to Anderson. Charges were collected in the sum of \$71.06 on 37,400 pounds of lumber at a rate of 19 cents per 100 pounds. The rate lawfully applicable was 20 cents and the shipment was undercharged. The rates to and from Augusta over the route of movement were 10.5 cents from Shore to Augusta and 6.5 cents from Augusta to Anderson. The discrepancy was protected by Atlantic Coast Line Fourth Section Application No. 704, which was set for hearing to that extent with the complaint.

Defendants argue that the through rate properly exceeded the aggregate of the rates to and from Augusta, because the component from Shore to Augusta was not a voluntary rate. The Georgia &

Florida is said to make the rates from the vicinity of Shore to Augusta over its direct intrastate route. The rates maintained are based on the Georgia Railroad Commission's class P scale, which is said to be exceedingly low, so low that the Georgia commission recently has authorized increased rates in "simple justice to the carriers." Defendant Atlantic Coast Line meets the Georgia & Florida's rates to Augusta over its more circuitous interstate route. We have repeatedly held, however, that a joint rate may not exceed the aggregate of the intermediate rates, even though one of the intermediate rates is depressed by rail or water competition. *Spartanburg Chamber of Commerce v. S. Ry. Co.*, 34 I. C. C., 484, 494. Effective April 10, 1914, the rate from Shore to Anderson, over the route of movement, was reduced to 17 cents, in the course of a general revision of rates undertaken by the carriers in the southeast to eliminate fourth section violations wherever possible and to conform their rates to the principles enunciated in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. Defendants also compare the through rate assailed with rates on lumber between other points in the same general territory.

We find that the rate assailed from Shore to Anderson was unreasonable to the extent that it exceeded a rate of 17 cents per 100 pounds. We further find that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent that the charges collected exceeded the charges that would have accrued at the rates herein found reasonable, and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, the routing of the first shipment not being definitely shown, and complainant, accordingly, should prepare a statement showing for each shipment the date of movement, car number and initials, route, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further issuing an order awarding reparation.

38 I. C. C.

No. 7883.
ODEN-ELLIOTT LUMBER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted July 13, 1915. Decided February 21, 1916.

Carload shipments of lumber from Sanford and River Falls, Ala., to Knoxville, Tenn., found not to have been misrouted and the rates applicable over the routes of movement not found unreasonable. Complaint dismissed.

J. T. Slatter for complainant.

William Burger for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business with its principal office at Birmingham, Ala. By complaint, filed April 5, 1915, it alleges that the combination rate of 19.5 cents charged by defendants for the transportation of three carloads of lumber from Sanford, Ala., and one carload of lumber from River Falls, Ala., to Knoxville, Tenn., was unreasonable and in violation of section 6 of the act, in that a rate of 17.5 cents was available. Reparation is asked.

The shipments from Sanford moved in October, 1914; the shipment from River Falls in November, 1914. All four cars were consigned to the Holston Box & Lumber Company located on the rails of the Southern Railway at Knoxville and were routed by complainant "Southern Railway delivery." Sanford and River Falls both are local stations on the Louisville & Nashville Railroad's branch line from Georgiana south of Montgomery, Ala., to Graceville, Fla., and the shipments were moved by the Louisville & Nashville to Birmingham where they were turned over to the Southern Railway. A combination rate of 19.5 cents was charged which was legally applicable over the route of movement; 8 cents per 100 pounds to Birmingham and 11.5 cents beyond. A rate of 17.5 cents was maintained by the Louisville & Nashville from River Falls to Knoxville, a rate of 18.5 cents from Sanford, and provision was made for the absorption of switching charges of other carriers at Knoxville to the extent that such other carriers would switch traffic reaching Knoxville over the Louisville & Nashville, but the Southern Railway

provided in its tariffs that it would not switch for the Louisville & Nashville at Knoxville. Complainant was accorded the lowest rate consistent with its specific routing instructions.

The shipments clearly were not misrouted. No evidence was adduced to show that the rate charged was unreasonable for the service rendered over the route of movement.

We find that the rate assailed was legally applied and that, upon this record, it is not shown to have been unreasonable. An order dismissing the complaint therefore will be entered.

No. 8028.

McCAULL-DINSMORE COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted September 13, 1915. Decided February 21, 1916.

Rate charged for the transportation of a carload of wheat from Hardin, Mont., to Minneapolis, Minn., found unreasonable. Reparation awarded.

S. J. McCaull for complainant.

G. P. Lyman for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain business with its principal office at Minneapolis, Minn. By complaint, filed May 17, 1915, it alleges that the rate charged by defendants for the transportation of a carload of wheat shipped September 30, 1913, from Hardin, Mont., to Minneapolis was unjust, unreasonable, and in violation of the aggregate of intermediate rates rule of the fourth section. Reparation is asked.

The shipment weighed 60,640 pounds and charges were collected in the sum of \$241.19 at a combination rate of 39.5 cents per 100 pounds, composed of a rate of 12 cents from Hardin to Huntley, Mont., and a rate of 27.5 cents from Huntley to Minneapolis. An inspection fee of \$1.65 was included. Defendants contemporaneously maintained a rate of 8.5 cents per 100 pounds from Hardin to Huntley, applicable on intrastate traffic, and complainant contends that

the rate charged was unreasonable and unlawful to the extent that the component applied from Hardin to Huntley exceeded 8.5 cents.

Huntley is 45 miles from Hardin and the rate charged for that portion of the through movement was the interstate distance rate of 12 cents, which earned 5.3 cents per ton-mile. Minneapolis is approximately 870 miles from Huntley, and the 27.5-cent rate applicable between those points earned 6.3 mills per ton-mile. The rate charged for the initial movement was clearly out of proportion to the rate charged for the movement beyond Huntley. Defendants did not seek to justify the rate charged but stated that instructions had been issued to establish a through rate of 36 cents from Hardin to Minneapolis based on a rate of 8.5 cents to Huntley and a rate of 27.5 cents beyond.

We find that the rate assailed was and for the future will be unreasonable to the extent that it exceeded or exceeds 36 cents per 100 pounds. No violation of the aggregate of intermediate rates rule of the fourth section can be found, for the reason that the 8.5-cent intrastate rate involved was not filed with us. We further find that complainant made the shipment involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$21.24, with interest thereon from May 6, 1915.

An order will be entered accordingly.

38 I. C. C.

No. 7832.

KORNFALFA FEED MILLING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted August 31, 1915. Decided January 4, 1916.

1. Rate of 25 cents per 100 pounds charged for the transportation of certain carload shipments of refuse sirup, in tank cars, from various points in Colorado and Nebraska to Kansas City, Mo., not found to have been unreasonable.
2. Provision of the Chicago, Burlington & Quincy Railroad's tariff according a transit arrangement at Omaha and refusing a similar arrangement at Kansas City found to have been unjustly discriminatory. Reparation denied because damage is not proven.

Edwin S. McCrary and K. M. Wharry for complainant.

T. J. Norton and A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company.

H. G. Herbel and F. B. Clark for Missouri Pacific Railway Company.

W. F. Dickinson and H. L. McReynolds for Chicago, Rock Island & Pacific Railway Company and the receivers thereof.

R. B. Scott and K. F. Burgess for Chicago, Burlington & Quincy Railroad Company.

H. A. Scandrett and H. G. Kaill for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of mixed stock feed at Kansas City, Mo. By complaint filed March 15, 1915, it alleges that defendants' rate of 25 cents per 100 pounds for the transportation of refuse sirup, in carloads, in tank cars, from various points in Colorado and Nebraska to Kansas City was and is unreasonable and unjustly discriminatory. Reparation is asked. The complaint was amended orally at the hearing to allege that the discrimination originally alleged resulted from the application of more favorable rates to Omaha, Nebr., and St. Louis, Mo. No objection was made to the amendment.

Numerous shipments of refuse sirup in tank cars from Longmont, Loveland, and Fort Collins, Colo., to Kansas City are involved, which moved subsequently to June 6, 1913, and on which charges

were collected at the published rate of 25 cents per 100 pounds. The complaint names 16 beet-sugar producing points, of which Brush, Sterling, Eaton, Greeley, and Longmont, Colo., and Scotts Bluff, Nebr., are representative.

Complainant manufactures blended or mixed stock feed at Kansas City, using alfalfa hay, various grains, and refuse sirup. The refuse sirup is a low-grade beet-sugar product and is used principally to sweeten the feed. The percentage of the sirup used, and of the other ingredients, varies according to the grade of the blend or mixture produced. The percentage of sirup varies from 15 per cent to 50 per cent. The invoice prices of the sirup at the sugar mills range from \$8 to \$11 per ton.

The western classification rates refuse sirup or beet slop in carloads, class C. The class C rates from the points involved are 37 cents to Kansas City and Omaha, and 50 cents to St. Louis. But the effective rates on refuse sirup are commodity rates. Complainant has competitors at St. Louis and Omaha. The products of complainant's mill, and of its competitors, are marketed largely at points east of the Mississippi River. The rates from points west of the river to points east of it usually are made by combination on the river, and to meet the competition encountered successfully as regards transportation, complainant claims that it must be able to have its traffic moved to the river crossings on a parity with its competitors.

The Chicago, Rock Island & Pacific; the Atchison, Topeka & Santa Fe; the Missouri Pacific; and the Union Pacific railways, and the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, are the principal carriers serving Kansas City from the beet-sugar producing points involved.

The 25-cent rate assailed is blanketed to all Missouri River crossings from Kansas City to Sioux City, inclusive. A rate of 27½ cents applies to St. Louis and other Mississippi River crossings. Several of the carriers provide a transit arrangement on grain, grain products, and refuse sirup in, and mixed feed out, at Kansas City at the through rate from point of origin to destination. The Burlington provides a transit arrangement at Omaha when the raw material moves in and the mixed feed moves out over its line. Complainant does not use the transit arrangement accorded by the other defendants, as it purchases much of its raw material at points served by the Burlington and pays the full proportional rate of 8 cents on the outbound feed to points east of Kansas City instead of the balance of the through rate. Its competitors at Omaha can and do avail themselves of the Burlington's transit service at Omaha to complainant's detriment.

Rates on blackstrap molasses from New Orleans, La., and Gulf points are cited as follows: 16 cents to Cairo, Ill., 566 miles; 18

38 I. C. C.

cents to St. Louis, 699 miles; 20 cents to Kansas City, 867 miles; and 22 cents to Omaha, 1,061 miles. Refuse sirup competes with blackstrap molasses in the manufacture of stock feed, but the rates cited on blackstrap molasses are influenced by severe competition, as discussed in *Molasses Rates from Mobile, Ala.*, 28 I. C. C., 666. The rates on sirup from Colorado points are the same as the rates on sugar, while from Utah and Idaho the rates on sirup, 33 cents, are 17 cents less than the rates on sugar, 50 cents. Complainant asks a similar differential in the rates from the points involved, but no reason appears for a definite relationship between the rates on sugar and on sirup. Complainant also compares rates and earnings on sirup with rates and earnings on other commodities from Colorado to Mississippi River.

The shipments of sirup involved which moved from Fort Collins were routed over the Union Pacific, the others over the Great Western Railway and the Union Pacific. The distance to Kansas City over these lines averages about 700 miles, and the 25-cent rate assailed earns a little over 7 mills per ton-mile. All of the shipments made by complainant from beet-sugar producing territory average 94,270 pounds per car. The average short-line mileage from all points set forth in the complaint is about 600 miles. On this basis the shipments earned for the carriers 8.4 mills per ton-mile, 39.8 cents per car-mile, and \$235 per car.

Complainant's St. Louis competitors apparently are not dependent upon refuse sirup for the manufacture of their feed, drawing mainly on the blackstrap molasses market. Very little refuse sirup has moved to St. Louis from beet-sugar mills. The producers of refuse sirup have preferred to market their product at points on the Missouri River.

We find that the rate assailed is not shown to be or to have been unreasonable and that it is not unjustly discriminatory in comparison with the 27½-cent rate maintained by defendants to St. Louis.

The Burlington's representative states that transit service was not accorded complainant at Kansas City because Kansas City is the Burlington's southern terminus and that traffic to St. Louis requires an out of line haul. But transit at Omaha also involves an out of line haul. Moreover, the average mileage to St. Louis by way of Kansas City is approximately the same as by way of Omaha.

We find that the Burlington's provision of transit service at Omaha, while it refuses to furnish similar service at Kansas City, unjustly discriminates against complainant's traffic, and that the discrimination should be eliminated. No reparation will be awarded on account of the discrimination for want of proof of damage.

An order will be entered accordingly.

38 I. C. C.

No. 7774.
BENNETT & SON ET AL.
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
1548, 1747, AND 1757.

Submitted July 3, 1915. Decided March 3, 1916.

1. Rates for the transportation of bituminous coal in carloads from the Kanawha and New River districts in West Virginia to Culpeper and Manassas, Va., not found unreasonable, and the complaint dismissed.
2. The inhibition of the long-and-short-haul clause of the fourth section is not restricted to movements over the line of a single carrier, but extends to transportation over routes in which one or more carriers participate.
3. The defendants' fourth section applications which seek authority to continue lower rates on coal from the Kanawha and New River districts to Alexandria, Va., and Washington, D. C., than to Culpeper and Manassas, Va., granted in part.

F. C. Bryan and *R. B. Brown* for complainants.

W. S. Bronson for Chesapeake & Ohio Railway Company.

A. M. Bull for Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this proceeding the rates charged by the defendants for the transportation of bituminous coal in carloads from the Kanawha and New River districts, in the state of West Virginia, to Culpeper and Manassas, in the state of Virginia, are alleged to be unreasonable and unjustly discriminatory and in violation of sections 1, 3, and 4 of the act. Those portions of the Fourth Section Application No. 1548, of the Southern Railway, and of applications Nos. 1747 and 1757 of the Chesapeake & Ohio Railway, which seek authority to continue lower rates to Alexandria, in the state of Virginia, and to Washington, in the District of Columbia, than the rates in effect at the same time to Culpeper and Manassas, and to other intermediate points, were heard in connection with this proceeding. The rates hereinafter stated are for the net ton unless otherwise indicated.

The Kanawha and New River districts are on the Chesapeake & Ohio Railway east of and near Charleston, in the state of West

Virginia. Gauley Bridge is the dividing line between the two districts, the Kanawha lying directly west and the New River directly east of that point. The average difference in distance from the producing points of the two districts to destinations east and west is 70 miles. On shipments to the west the rate is 10 cents higher from the New River district, and on shipments to the east the rate is 10 cents higher from the Kanawha district. From the New River district to both Culpeper and Manassas the rate is \$2, while from the Kanawha district the rate to both points is \$2.10.

The Chesapeake & Ohio does not reach either Culpeper or Manassas over its own rails. Its road ends at Orange, in the state of Virginia, from which point it has trackage rights over the Southern and Washington Southern railways to Washington. Under the trackage agreement coal from the West Virginia districts, destined to points between Orange and Washington, is turned over to the Southern Railway at Orange for delivery; but coal destined to Washington or beyond is handled through to the latter point by the Chesapeake & Ohio in its own trains. The rates to Culpeper, Manassas, and Alexandria are joint rates, while those to Washington are published by the Chesapeake & Ohio alone.

The evidence introduced in support of the contention that the rates to Culpeper and Manassas are unreasonable in and of themselves consists mainly of comparisons with rates on coal for similar distances in other parts of the country, chiefly in trunk line and central freight association territories, and also with the rates in effect to Orange, Alexandria, Washington, and Newport News.

The following table shows the rates now in effect from each of said districts to all the points in question, together with the average distances from each district, and from both districts to said points:

To—	From New River district.		From Kanawha district.		Average distance, both districts.	Average rate.
	Average distance.	Rate.	Average distance.	Rate.		
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Orange.....	247	\$1.50	317	\$1.60	282	\$1.55
Culpeper.....	264	2.00	334	2.10	299	2.05
Manassas.....	299	2.00	369	2.10	334	2.05
Alexandria.....	325	1.47	395	1.55	360	1.52
Washington.....	332	1.47	402	1.70	367	1.59
Newport News.....	426.8	1.50	496.8	1.60	461.8	1.55
Newport News for transshipment.....	426.8	1.25	496.8	1.34	461.8	1.30

¹Rates published are, per gross ton, \$1.65 and \$1.75, respectively.

²Rate published is, per gross ton, \$1.90.

In view of the lower rates to Alexandria, Washington, and Newport News for hauls of greater length than to Culpeper and Manassas, the complainants contend that the rates to the latter

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points are unreasonable. But the record shows that the rates to the three points first mentioned are influenced by competitive conditions that do not exist at Culpeper or Manassas. Coal moves at low rates to Washington and Alexandria by way of the Chesapeake & Ohio Canal from the Cumberland district in the state of Maryland, and the all-rail rates from producing districts in that state as well as from Virginia and Pennsylvania are practically controlled by the canal rates. Coal moves also from mining regions in Maryland and Pennsylvania by rail and water through Baltimore to Newport News. The evidence of record shows that the rates to Alexandria, Washington, and Newport News are influenced by the water or rail-and-water competition to such an extent that they can not fairly be accepted as a measure of the reasonableness of rates to points where similar circumstances and conditions do not exist. The Chesapeake & Ohio and Southern railways compete for the coal traffic of Orange, and it was said on the hearing that the rates to that point were made the same as to Newport News in obedience to the requirements of the fourth section. The Chesapeake & Ohio publishes a rate of \$1.90 per gross ton on gas coal from the West Virginia fields to Washington, but as little or no coal moves on this rate it is not of importance here.

Evidence was submitted by the complainants, the purport of which is to show the divisions of the joint rates between the Chesapeake & Ohio and Southern railways, and the contention is made that the rates to Culpeper and Manassas should be no higher than the combinations of the lowest division received by the Chesapeake & Ohio up to Orange, plus the local rate of the Southern beyond.

The rates charged by the Chesapeake & Ohio and Southern railways on coal from the same West Virginia districts to points south of Lynchburg are also referred to, but the evidence shows that such rates are relatively no lower than the rates to Culpeper and Manassas.

As above stated, exhibits were introduced of record showing rates on coal for similar distances in other parts of the country, chiefly in trunk line and central freight association territories. The figures appear to have been taken from the reports of this Commission in decided cases, or from briefs of counsel in such cases, and there is no evidence of record to show the relative transportation conditions as between such rates and those attacked in this proceeding. But counsel for the complainants contend that the Commission should take notice of the conditions of transportation disclosed in its own decided cases. Even if we were to accept this contention the complainants would be in no better position for the reason that they have submitted no evidence showing a comparison of the transportation conditions considered in the decided cases with those involved in this case. Under such circumstances these exhibits can not be treated as having substantial

value in determining the reasonableness of the rates under consideration. *Lombard Brick & Tile Co. v. C. & N. W. Ry. Co.*, 30 I. C. C., 84, 87; *Railroad Commissioners of Mont. v. D. & R. G. R. R. Co.*, 27 I. C. C., 522, 524-525; *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 515, 517. Upon the evidence of record we find that the rates under attack are not in themselves unreasonable.

The complainants further allege that the rates to Culpeper and Manassas subject them to undue and unreasonable prejudice and disadvantage, and give to the dealers and users of coal at Washington, Alexandria, and Newport News undue and unreasonable preference and advantage. The evidence shows that the coal dealers and manufacturers who use coal in their plants at Culpeper and Manassas are handicapped by the higher rates on coal from the West Virginia districts as compared with rates from the same and other producing fields to Alexandria. It does not appear that any serious discrimination arises out of the lower rates to Washington or Newport News, nor is there direct evidence of any definite damage to the complainants on account of the lower rates to Alexandria. It does appear, however, that the business interests of the complainants and others at Culpeper and Manassas are to some extent injuriously affected by the existing rate adjustment. This is true notwithstanding the fact that the evidence fails to show the rates to Culpeper and Manassas are in themselves unreasonable. The fact that a rate is *per se* reasonable does not prove that it may not be unlawful on other grounds. If rates are relatively unjust, so that an undue preference accrues under them to one person or locality, or an undue prejudice results to another person or locality, the law is violated, although the higher rates are not in themselves unreasonable. It is clear from the record that under the present coal rate adjustment there is a discrimination against the complainants and against Culpeper and Manassas as communities. Whether such discrimination is undue or unreasonable depends upon whether the defendants are justified in charging lower rates to Alexandria and Washington than to Culpeper and Manassas; and this question must be determined upon the evidence submitted in connection with the defendants' applications for relief from the long-and-short-haul provision of the fourth section.

There is no doubt of the existence of water competition at Alexandria and Washington or of the fact that coal moves to those points under all-rail rates from producing fields in Maryland and Pennsylvania which are much nearer than the West Virginia fields. It appears that the Chesapeake & Ohio Railway Company does not, as a rule, publish higher rates to intermediate points than to more distant points over its own rails. It was said that in compliance

with its general practice in that regard that company publishes the same rate to Orange as to Newport News. Its contention, however, with respect to the higher rates to Culpeper and Manassas than to Alexandria, is that the fourth section is not violated, because part of the haul to these points is over the line of the Southern Railway.

There is nothing in that point. The inhibition of the long-and-short-haul clause of the fourth section is not restricted to movements over the line or lines of one carrier only, but embraces hauls over the lines of any number of carriers. The Chesapeake & Ohio joins in the rates to Culpeper and Manassas as well as in the rates to Alexandria, and together with the Southern Railway is subject to the requirements of section 4 and responsible for any undue or unreasonable discrimination arising from such rates. The contract under which it maintains trackage rights to Alexandria and Washington can not affect the question. Neither of the defendants can use the contract as a shield against the obligation laid upon it by the statute. *Greenbaum Co. v. C. & O. Ry. Co.*, 25 I. C. C., 352, 354-355; *Greenbaum Co. v. L. & N. R. R. Co.*, 31 I. C. C., 699, 707.

The complainants do not deny that the rates now in effect to Washington and Alexandria are water compelled rates. They contend, however, that the disparity between such rates and the rates to Culpeper and Manassas is greater than is justified by the difference in transportation conditions. We think there is force in that view, but we do not agree that the divisions received by the Chesapeake & Ohio for its haul up to Orange on coal destined to Alexandria, plus the local rates over the Southern to Culpeper and Manassas, should be made the measure of the rates to the latter points as contended by complainants. We have said on several occasions that the divisions of rates are ordinarily of no concern to shippers when the through charges are themselves reasonable, and we find here that the divisions of the Alexandria rates are not a criterion for our guidance in determining what rates should apply to Culpeper and Manassas.

The average rate from the two West Virginia districts to Orange is \$1.55. The average rate to Culpeper and Manassas is \$2.05. The difference in the average rates is 50 cents, whereas the distance is only 17 miles greater to Culpeper and 52 miles greater to Manassas. To Alexandria the average rate is \$1.52. The distance is 26 miles greater than to Manassas and 61 miles greater than to Culpeper. The difference in the average rate from both producing districts to Alexandria and the average rate from such districts to Culpeper and Manassas is 53 cents.

We are satisfied that on account of competitive conditions at Alexandria and Washington the defendants have shown justifica-

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tion for charging lower rates to those points than to Culpeper and Manassas, but we are not convinced that the existing differentials against the latter points are warranted.

On all the facts of record we are of opinion and find that the rates on bituminous coal to Culpeper and Manassas, and to other intermediate points taking the same rates, may exceed the rates on like traffic to Alexandria and Washington, but in our opinion the present adjustment has the effect of unduly discriminating against such intermediate points, and in view thereof we further find that the rates to Culpeper and Manassas, and to other intermediate points taking the same rates, should not exceed \$1.85 per net ton from the New River district and \$1.95 per net ton from the Kanawha district. To that extent only will the relief prayed for in the fourth section applications of defendants be granted, and an order will be entered accordingly.

As the rates to Culpeper and Manassas are not shown to be unreasonable in and of themselves, and as no evidence of specific damage to any of the complainants was submitted, the prayer for reparation must be denied, and the complaint must be dismissed.

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WESTPORT STONE COMPANY AND BIG FOUR STONE
COMPANY.

SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES
OF RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSI-
FICATION TERRITORY.

Decided March 3, 1916.

No obligation shown to rest upon the Cleveland, Cincinnati, Chicago & St. Louis
Railway to switch cars beyond the junction points of the tracks of the
respective stone companies and the spurs maintained by the railroad.

Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

This supplemental report concerns the Westport Stone Company and Big Four Stone Company, parties to the original proceeding herein, 34 I. C. C., 596. Because of the similarity in the situations involved they will be discussed in one report. Following the decision of the Commission in the *Industrial Railways Case*, 29 I. C. C., 212, by tariffs filed to become effective April 1, 1914, the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter referred to as the Big Four, canceled for interstate traffic switching allowances of \$1 per car on stone theretofore made to the industries named above. Both stone companies protest this cancellation and request the re-establishment of the allowances formerly in effect.

The complaints were entered under the Commission's Docket No. 4181, subsequently consolidated with Investigation and Suspension Docket No. 414, and testimony was heard in the consolidated proceeding. At the hearing covering the Westport and Big Four Stone companies no evidence was offered by the Big Four except by way of cross-examination of witnesses for the two stone companies.

The Westport Stone Company, successor of the Hollensbe Stone Company, owns about 104 acres of quarry land in the vicinity of

Westport, Ind., a station on the Michigan division of the Big Four, and is engaged in mining and shipping limestone. It has constructed and maintains about 12,000 feet of standard-gauge track, of which some 7,000 feet are designated as main track, and connect with a spur 1,000 feet in length from the main track of the Big Four. While this spur is located on land owned by the stone company, it was constructed and is maintained by the railroad. The stone company owns one locomotive and one freight car. It is testified that the industry tracks were constructed in 1890 under an agreement between the Vernon, Greensburg & Rushville Railroad, now a part of the Big Four system, and Ira H. Hollensbe, who owned the quarries prior to their acquisition by the Hollensbe Stone Company. The terms of the agreement accorded Hollensbe the option of performing the services incident to switching cars between the rails of the Big Four and the quarries or having such services performed by the line-haul carrier. In the event of the adoption of the first alternative it was provided that an allowance of \$1 per car on stone be paid Hollensbe. It appears that the engines of the road-haul carrier were not adapted to operation over the sharp curves of the industry tracks and the switching services referred to were from the outset performed by the industry's engine, not only to and from the junction point of the plant tracks and railroad spur but beyond to the main track of the Big Four.

It is stated that pursuant to the agreement mentioned above an allowance of \$1 per car on stone was paid to Hollensbe and successors, including the Westport Stone Company, at regular intervals from 1890 until April 1, 1914. For the year ended June 30, 1913, 349 outbound cars of stone were switched by the stone company, on which it received an allowance of \$349. The investment value of the Westport Stone Company is stated to be approximately \$45,000, of which amount \$18,000 is said to represent the cost of the engine and tracks. The cost of maintaining and operating the engine and tracks is estimated to be about \$2,000 annually. It is to be observed, however, that approximately two-thirds of the plant engine's time is spent in switching about the quarries.

The Big Four Stone Company, formerly the property of Ira H. Hollensbe, owns about 90 acres of quarry land in the vicinity of Newpoint, Ind., a station on the Chicago division of the Big Four, and is also engaged in mining and shipping limestone. It has constructed and maintains some 14,000 feet of track, of which about 11,000 feet are designated as main track, and connect with a spur 1,000 feet in length from the main track of the Big Four. While this spur is located on land owned by the stone company, it was constructed and is maintained by the railroad. The stone company owns one locomotive and four freight cars. It is testified that the tracks were

originally constructed of wood in 1882 under an agreement between the Big Four and Ira H. Hollensbe substantially similar in terms to his agreement with the Vernon, Greensburg & Rushville Railroad, described above. As in the case of the Westport Stone Company, it appears that the engines of the Big Four were not suitable for operation over the sharp curves of the industry tracks, and all services incident to switching cars between the quarries and the rails of the Big Four were from the beginning performed by the industry, not only to the junction point of the plant tracks and spur but beyond to the main track of the railroad.

It is stated that in accordance with the agreement mentioned above an allowance of \$1 per car on stone was paid to Hollensbe and successors, including the Big Four Stone Company, at regular intervals from 1882 until May 1, 1913. For the year ended June 30, 1913, 281 outbound cars of stone were switched by the stone company, on which it received an allowance of \$281. The investment value of the Big Four Stone Company is said to be approximately \$30,000, of which amount \$17,000, it is stated, represents the cost of the engine and tracks. The cost of maintaining and operating the engine and tracks is estimated to be about \$2,500 annually.

The record shows that with respect to a number of destination points, including Cincinnati, Ohio, the rates on stone from Westport and Newpoint are the same as the rates from Greensburg and St. Paul, Ind. Greensburg, the junction point of the Michigan and Chicago divisions of the Big Four, is about 12 miles north of Westport and about 9 miles west of Newpoint. St. Paul is located on the Chicago division of the Big Four approximately 14 miles west of Greensburg. It is testified that the principal output of both stone companies is rubble stone, on which the rates have been increased substantially. The average capacity of the cars supplied by the Big Four is said to have increased from approximately 30,000 to 90,000 pounds.

As a general proposition, it may be said that a common-carrier railroad is under no obligation to haul cars at its own cost beyond its own rails. This statement, however, is subject to qualification. When a carrier adds to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at one industry while treating a like service at other similarly circumstanced industries as covered by the line-haul rate, it creates an unjust discrimination. Again, in the absence of changed conditions, a charge in addition to the line-haul rate would be improper for services which by long-continued general custom and usage have been treated as embodied in the line-haul charge. But neither of these exceptions is controlling in the instant case. The record

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affords no grounds for a finding of unjust discrimination. While the rates on stone to a number of points are the same from Westport and Newpoint as from Greensburg and St. Paul, there is no evidence indicating the location of the quarries at the two latter points or the services included in the line-haul rates therefrom. The mere fact that the Big Four voluntarily made the allowance involved during considerable periods in the past establishes no right in the stone companies to require such allowance to be continued. It shows at the most only the custom formerly in effect at two isolated points on the Big Four. The general custom of the Big Four with respect to the services included in its line-haul rates on stone was not described in the record.

Upon consideration of all the facts of record, we are of the opinion and find that no obligation has been shown to rest upon the Big Four to switch cars beyond the junction points of the tracks of the respective stone companies and the spurs maintained by the Big Four. Services beyond such points appear to be accessorial to the industries. The Big Four may either perform with its own power the services incident to switching cars between its main tracks and the junction points referred to above, or utilize the facilities of the stone companies as a means of performing such services. If the latter method is adopted, an allowance of \$1 per car on stone would not appear to be excessive for the services performed by the stone companies over the spurs of the Big Four. However, the interested parties involved herein have the necessary information at their disposal and will be expected to apply the principles and rules heretofore laid down in this proceeding. *Second Industrial Railways Case*, 34 I. C. C., 596; *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408.

HARLAN, *Commissioner*, dissenting:

The principle of law announced in the majority report that "a common-carrier railroad is under no obligation to haul cars at its own cost beyond its own rails" I have always regarded as sound, but I do not agree that tracks laid by a carrier upon the private property of a shipper for his special use are its own rails in the sense that they are facilities devoted to the public use; moreover, in the light of our previous rulings the proper point of interchange here is where the line carrier's right of way joins the property of the shipper.

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No. 7494.
COMMERCIAL EXCHANGE OF PHILADELPHIA
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted April 20, 1915. Decided February 21, 1916.

1. Defendants' rule limiting free storage time at Philadelphia, Pa., to two days held to have been justified and not found to be unjustly discriminatory.
2. Defendants required to amend their storage rules to provide for free storage time on account of bunching of cars by carriers.

R. D. Jenks and W. A. Glasgow, jr., for complainant.

Herbert Sheridan for Baltimore Chamber of Commerce.

G. S. Patterson for Pennsylvania Railroad Company.

William Kinter for Philadelphia & Reading Railway Company.

W. C. Coleman for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an incorporated association of dealers in grain and other commodities at Philadelphia, Pa. By complaint filed November 21, 1914, it alleges that defendants' allowance of two days' free storage time and charges, rules, and regulations relating to storage of flour, grain, feed, hay, and other commodities at Philadelphia are unreasonable and unjustly discriminatory. Reparation is asked. The discrimination alleged is not defined but apparently is predicated upon the treatment accorded to receivers of freight at New York, N. Y. The rules and regulations involved apply to both carload and less-than-carload freight delivered through defendants' regular freight stations and to carload freight delivered through certain public warehouses in Philadelphia. Complainant's contentions relate exclusively to the free storage time allowed on carload freight delivered through these warehouses and its testimony is limited to the storage of flour and hay. The Baltimore, Md., Chamber of Commerce intervened at the hearing on behalf of complainant.

Prior to 1907 four days' free storage time was allowed at Philadelphia on general merchandise, ten days on flour, five days on hay and straw. During that year the free time allowed was reduced to four days on all freight. The present rules and regulations according only 48 hours or two days' free time, took effect November 15, 1914.

For a number of years defendants have contracted with the terminal warehouse companies at Philadelphia to unload carload package freight and to store it during the free time provided by defendants' tariffs. At the expiration of the free time the property passes into the custody of the warehouse company for and on account of its owners. Under the contracts made the railroad company agrees to pay the warehouse company a certain compensation, usually 3.5 cents per barrel on flour and 40 cents per ton on miscellaneous merchandise unloaded at the warehouses. The warehouse company agrees to unload carload package freight consigned to the various persons receiving freight at the warehouse, to assume responsibility for delivery to the consignee, and to present and collect the freight bills. The warehouse company makes what is termed tailboard delivery to the consignee on all commodities except hay. In other words, the warehouse company's employees truck the goods to the warehouse platform, where they may be loaded directly into wagons. The terminal warehouse charges on stored flour are assessed at the rate of 2 cents per barrel for the first 10 days or fraction thereof after the expiration of the free storage period allowed, 1 cent per barrel for each of the second and third periods of 10 days, and 2 cents per barrel for each succeeding 15 days. Charges are assessed on hay at the rate of 15 cents per ton for each of the first and second periods of 5 days after the expiration of the free time allowed, 40 cents per ton for the third period of 10 days, and \$1 per ton per day thereafter.

Large quantities of flour are sold by Philadelphia dealers to the jobbers who supply the small bakers. These sales generally are made by sample after the flour has arrived at Philadelphia. Witnesses for complainant testified that the major portion of the first free time day is used by the dealer in securing funds to pay the customary arrival draft and in obtaining the bill of lading, so that only one day of free time is available for placing samples with prospective customers or for inspection of the flour by the customer, and for the sale of the flour and its removal from the warehouse. Hay is received at Philadelphia largely on consignment. A sample of hay is not fairly representative of the carload, and the prospective purchaser of hay accordingly must inspect the whole carload to satisfy himself of its quality. It requires more time to unload hay from the warehouses than from the cars, because the warehouses are large and the hay is piled up 8 or 10 feet. At times it is necessary to truck the hay the whole length of the warehouse to the wagons. No assistance is rendered the consignee in removing hay from the warehouse. Complainant's witnesses testified that delays are encountered in removing hay from the warehouses because of the congestion of teams and because of the necessity of waiting to weigh the hay in ac-

cordance with the requirements of the carriers. The testimony is very general, however, and does not disclose specific instances of delay.

Defendants' testimony deals with the storage rules, regulations, and charges generally. Their rules limiting the free storage time at Philadelphia are substantially the same as the rule contained in the uniform code of storage rules adopted by the American Railway Association. This code has been indorsed by the Commission, but this action was taken subject to the duty to inquire into the legality or reasonableness of any rule attacked. Several years ago the free storage time varied throughout the country. A period of two days generally was allowed in the south and in the west. Between Chicago, Ill., and New York, however, the free time ranged from two days to six days. Three days were allowed at New York; four days at Altoona and Tyrone, Pa., and Baltimore and Frederick, Md., and certain other places; six days at outlying country stations. The uniform storage code has since been adopted by defendants, with some slight changes not affecting the free time, at all points on their lines, except in the New York harbor. A two-day free storage period was chosen because that was the period allowed over a large portion of the country and because that was the free time period universally allowed consignees for unloading freight under car demurrage rules.

Many consignees took advantage of the four days' free period previously allowed at Philadelphia and unnecessarily allowed their freight to remain in the freight stations for the full period. Great congestion resulted which rendered it difficult for a consignee who desired to remove his freight promptly to get it. Defendants assert that the two-day period has eliminated such congestion and, coupled with the increased capacity of the freight houses, has improved conditions to the satisfaction of shippers and teamsters patronizing the freight stations. Formerly from 7 per cent to 20 per cent of the less-than-carload shipments received at the various freight stations remained there until the third day of the four-day free period allowed. Substantially all such freight is now removed within the two-day period without any material increase in the amount finally stored over that stored when the four-day rule was in effect.

Complainant contends that freight unloaded through the terminal warehouses is in an entirely different category from freight unloaded at the carriers' regular freight stations. It argues that the regular stations are intended mainly and used for less-than-carload freight, while only carload freight is handled at the terminal warehouses; also that the arrangement with the terminal warehouse companies is of great advantage to the carriers, in that it conserves their own yard space in the center of the city, and secures the prompt release

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of their equipment, thereby reducing the per diem charges on foreign cars. Defendants reply that there is no justification for one rule on traffic unloaded through the terminal warehouses and another on traffic unloaded through regular freight stations or on team tracks; also that the two-day period has been found sufficient on traffic consigned to team tracks, which is unloaded by the consignee without assistance from the carrier, and that therefore it should be ample for unloading at the terminal warehouses, where consignees are assisted in the removal of all freight, except hay, by the warehouse companies. Defendants state also that one effect of a more liberal free time allowance in connection with warehouse freight than in connection with team or regular freight station traffic would be the unnecessary use of warehouses by shippers in order to take advantage of the longer free period. Complainant points out that while the free time has been reduced there has been no reduction in the compensation allowed by the railroads to the warehouse companies, but defendants answer that the question of the compensation allowed the warehouse companies has been considered, and that although a definite agreement has not been reached the reduction in the free time allowed will be a factor in the determination of such compensation in the future. Complainant bases its demand for a longer free storage period largely on the commercial difficulties experienced at Philadelphia, which its members can do much to remedy. No effort was made to show that it is not reasonably practicable to remove freight from the terminal warehouses within the present two-day free period.

Storage regulations are intended primarily to prevent congestion of carriers' terminal facilities. The public interests also require that freight should be removed promptly from the carriers' premises or from premises furnished by carriers as an adjunct to their terminal facilities. To this end carriers may maintain storage regulations provided the regulations are reasonable and nondiscriminatory. *Wilson Produce Co. v. P. R. R. Co.*, 14 I. C. C., 170; *New York Hay Exchange Asso. v. P. R. R. Co.*, 14 I. C. C., 178. The complaint in *Philadelphia Team Owners' Protective Asso. v. P. & R. Ry. Co.*, 32 I. C. C., 387, commonly known as *The Tailboard Cases*, was prompted primarily by the difficulties alleged to have been experienced by teamsters in locating shipments in the freight houses at Philadelphia because of the piling of the freight in such intermingled masses that time was lost on account of additional hauling. The conditions at these freight stations apparently are much improved as a result of the present two-day free time period.

When the complaint was filed carload package freight destined to New York City, lighterage free, was allowed 10 days' free storage
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time on the New Jersey shore, with three days additional in New York, and one day additional for lighterage to the piers at New York, a total of substantially 14 days' free storage time. Prior to 1907 the free time allowed on the Jersey shore was 20 days, which was reduced to 10 days in 1907, and later in the same year by the Pennsylvania Railroad and other carriers to 4 days. The Erie Railroad and the Lehigh Valley Railroad refused to reduce the free time allowed by them and continued to allow 10 days. The other New York carriers, including defendants, accordingly were compelled for competitive reasons to restore the 10-day free time period on the Jersey shore. Subsequently the carriers serving New York filed tariffs which proposed to reduce the free time allowed to five days on the Jersey shore and two days at New York. The reduced period proposed for the Jersey shore was approved in *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47, but not the period proposed at New York. Defendants assert that the five-day period allowed on the Jersey shore is due to New York lines that declined to make any further reduction in the free holding period. Defendants also assert that because of direct warehouse handling and immediate issuance of warehouse receipts which may be used as the basis for credit, dealers in flour at Philadelphia have an advantage over dealers at New York who are subjected to charges for cartage to the warehouses and incidental delays in lighterage before receiving warehouse receipts. In *Brey v. Pennsylvania R. R. Co.*, 16 I. C. C., 497, where the complaint charged unjust discrimination in the then four-day free storage time on flour at Philadelphia in comparison with the longer period allowed at New York, we held that the situation at New York was due to competitive conditions that did not exist at Philadelphia and dismissed the complaint.

Upon all of the facts of record we find that defendants have justified the present two-day free storage rule assailed and that such rule is not shown to be unjustly discriminatory.

A material reason for the difficulty experienced by consignees at Philadelphia in removing flour within the free time allowed appears to be the bunching of cars by carriers. Complainant's witnesses testified that the running time on cars containing flour from Chicago to Philadelphia varied from 5 days to 20 days, and from Hastings, Minn., to Philadelphia from 11 days to 24 days, and that these variations in the running times render it impossible to regulate shipments so as to remove the freight from the warehouses within the free storage time. One of the witnesses called on complainant's behalf is a baker and the largest direct consumer of flour in Philadelphia. He testified that because of the bunching of cars he frequently had difficulty in removing his flour from the terminal warehouses within four

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days. Although he orders one car of flour shipped from Minneapolis, Minn., each day in order to secure a regular supply, the cars do not arrive in Philadelphia in the sequence in which they are ordered. The same witness cited numerous instances of bunching. Four cars ordered on separate dates between November 9 and November 16, for example, arrived, three on December 1 and one on December 2.

Defendants' demurrage rules contain a provision for additional free time on account of the bunching of cars by carriers but not their storage rules. The system employed in the handling of carload shipments through the terminal warehouses in lieu of storage on carriers' tracks or in their freight stations, and the peculiar circumstances governing at Philadelphia, indicate no reason why a bunching rule should there be applied in connection with free demurrage time but not in connection with free storage time. The facts appearing suggest in this case no difference in principle underlying free demurrage time and free storage time with respect to the application of a bunching rule, but we are not to be understood as reaching a conclusion to this effect for general application.

We find that defendants' tariffs are unreasonable in that they fail to contain a rule providing for additional free storage time on account of bunching of cars by carriers. Otherwise defendants' charges, rules, and regulations relating to storage are found not to be unreasonable or unjustly discriminatory.

An order will be entered in accordance with the conclusions herein announced.

CLARK, *Commissioner*, dissents.

38 I. C. C.

No. 7884.
BALTIMORE CHAMBER OF COMMERCE
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted November 3, 1915. Decided February 21, 1916.

1. Following *Commercial Exchange of Philadelphia v. P. R. R. Co.*, 38 I. C. C., 320, reduction from four days to two days in the period of free storage in warehouses on carload shipments of flour, feed, hay, and straw received at Baltimore, Md., found to have been justified.
2. Although not put in issue by the complaint, conditions are shown to be substantially the same as at Philadelphia, and indicate the propriety of a provision in storage rules for the bunching of cars.

Herbert Sheridan for complainant.

W. C. Coleman for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The issue in this case is the propriety of a reduction from four days to two days in the time allowed for free storage in railroad warehouses for carload shipments of flour, feed, hay, and straw received over the lines of the defendants at Baltimore, in the state of Maryland. The questions involved and the facts shown of record differ in no essential particular from the questions and facts in *Commercial Exchange of Philadelphia v. P. R. R. Co.* just announced, *ante*, p. 320, and the conclusions in the latter proceeding must therefore control the disposition to be made of this case. It will be necessary, therefore, only to point out the main features of the Baltimore situation.

The warehouses used by the Baltimore & Ohio Railroad Company and the Western Maryland Railway Company at Baltimore are owned or controlled by those carriers and are a source of some revenue to them. At Baltimore, as in Philadelphia, the warehouses are of advantage also in that they result in the more prompt release of the carriers' equipment and tend to prevent congestion at their team tracks. Such railroad facilities are of advantage to the shippers in that the latter are thereby relieved in some measure of the necessity of providing their own storage facilities. It is an advantage also to the trade to be able to buy hay and straw at the warehouses instead of from cars. To some extent, indeed, private warehouses for the storage of these commodities at Baltimore

seem to have been abandoned. It is asserted of record by some of the dealers at Baltimore that they abandoned their storage facilities under the belief that the defendants' storage arrangements would be permanent, and they charge bad faith in the reduction of the free time. They also testified that it is impracticable to remove freight from the warehouses within the free time period now allowed.

As at Philadelphia, *supra*, p. 320, the free time allowance at Baltimore has been gradually decreasing, despite the fact, urged by the complainants, that both the capacity of the cars and the minimum weights have materially increased. The history of the defendants' storage rules at Baltimore is fully explained of record but need not be detailed here. It will suffice to say upon the evidence adduced that, as applied to flour, feed, hay, and straw, the rules have not been shown to be unreasonable or unduly discriminatory. Nor is there anything of record tending to show that the application of these rules to other commodities results in charges that are not reasonable or that are discriminatory. Although not put in issue by the complaint, a point is made on the record of the failure of the defendants in their storage rules to deal with the matter of the bunching of cars in transit by the carrier. In view of the special conditions existing at Baltimore, the defendants ought to make allowance in their rules to cover the delays due to the bunching by carriers of cars in transit.

The complainant lays some stress upon the fact that at Baltimore the failure to remove flour within the free time period entails the payment of 30 days' charges upon flour remaining in storage, while at Philadelphia the storage periods are of 10 days each, giving the consignee an opportunity to reduce the penalty. The record discloses no reason why such a difference in the length of the storage periods should exist, and the desire for uniformity, which has prompted the carriers to harmonize the free storage periods at the two points, suggests that they ought also to bring about a corresponding harmony in such charges and in the general warehouse regulations, so far as they are under the carriers' control.

It will be understood, of course, that the reasonableness of the storage charges assessed at Baltimore by these carriers after the free time period is not involved in anything here said.

An order will be entered dismissing the complaint.

CLARK, *Commissioner*, dissents.

38 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 719.
FLUE LINING MINIMUM WEIGHT.

Submitted December 7, 1915. Decided March 3, 1916.

Proposed increase from 35,000 pounds to 50,000 pounds in the minimum carload weight for flue lining shipped from central freight association territory to interstate destinations, found not to be justified.

J. T. Johnston for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

J. M. Sternhagen for New York Central Railroad Company and Toledo & Ohio Central Railway Company.

H. J. Booth for Baltimore & Ohio Railroad Company.

C. T. Bliss for Buckeye Fire Clay Company.

H. E. Kilgus for Sewer Pipe Manufacturers east of Ohio River.

M. J. Molloy for American Sewer Pipe Company.

Alvin Hill for Robinson Clay Product Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect on various dates in October and November, 1915, respondents proposed to increase the minimum carload weight for flue lining in central freight association territory from 35,000 pounds to 50,000 pounds. Upon protest by producers and shippers of flue lining at various points in Ohio the tariffs were suspended until January 29, 1916, and later until July 29, 1916.

Flue lining is a hollow fire-clay product used to line chimneys in order to secure more adequate protection from fire. It is manufactured in various sizes. All sizes are 24 inches long, but the other dimensions range from 4 inches by 8 inches, to 24 inches by 24 inches for what are hereinafter called the rectangular sizes, and from 6 inches diameter to 36 inches for what may be termed the circular sizes. The shells or sides range from three-quarters of an inch in thickness in the smaller sizes to 2 inches in the largest sizes. The official classification rates flue lining sixth class, minimum 30,000 pounds, but commodity rates, lower than the class rates, and with a minimum weight of 35,000 pounds, have been carried in respondents' tariffs for several years. Sewer pipe, which is analogous, moves at sixth-class rates, minimum weight 24,000 pounds.

Respondents contend that flue lining is included in the so-called brick list and takes brick rates, and therefore should yield the same revenue per car as other articles similarly listed. The minimum

weight applicable to all articles taking brick rates except flue lining is 50,000 pounds, and respondents state that manufacturers and shippers of brick have complained that the lower minimum on flue lining results in unjust discrimination. Flue lining does not compete with brick or hollow clay products as a building material generally, and the transportation conditions surrounding the traffic apparently do not demand the same minimum. An exhibit filed by respondents shows the movement of 512 cars from producing points served by the Pennsylvania Company to interstate destinations of which only 6 cars, or a fraction over 1 per cent, were loaded to the proposed minimum. The exhibit fails, however, to disclose the dimensions of the flue lining contained in the cars enumerated. Respondents state that their only desire is to increase their earnings per car to equal their earnings on brick, and that if the proposed increased minimum is not allowed they will increase their rates. The propriety of such increased rates will be considered when they are proposed.

The carriers in trunk line territory, some of whom are respondents herein, maintain a minimum of 35,000 pounds, but are said to await the outcome of this proceeding before attempting to increase it. If the minimum proposed by respondents is allowed they will file tariffs increasing the minimum in trunk line territory also.

Protestants admit that the rectangular sizes up to and including the sizes $8\frac{1}{2}$ inches by 13 inches, and circular sizes up to 9 inches in diameter, which sizes comprise about 40 per cent of protestants' business, can be loaded to the proposed minimum in a standard 36-foot car. Other sizes can not be loaded to the minimum except in large cars, which are seldom furnished. It is stated that the Public Utilities Commission of Ohio and the Public Service Commission of Indiana have permitted minimum weights of 42,000 pounds and 50,000 pounds, respectively, for intrastate traffic. Protestants admit that they can load 40,000 pounds, except with the largest sizes of flue lining, which comprise from 2 per cent to 5 per cent of their total output.

We find that the minimum proposed has not been justified, and an order will be entered requiring the cancellation of the tariffs under suspension but without prejudice to the establishment of a minimum of 40,000 pounds for the standard 36-foot car with provision for higher minimum weights when larger cars are furnished.

38 I. C. C.

No. 4069.¹

CADDO RIVER LUMBER COMPANY

v.

CADDO & CHOCTAW RAILROAD ET AL.

Decided March 1, 1916.

On rehearing and further consideration, reparation awarded on account of unreasonable rates charged for the transportation of certain carloads of lumber from points in Arkansas, Louisiana, and Texas to points in western Nebraska and Kansas.

SUPPLEMENTAL REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

We found in our original report on rehearing herein, rendered January 12, 1914, unreported, that defendants' rates on yellow-pine lumber from certain points in Arkansas, Louisiana, and Texas to certain points in western Nebraska and Kansas were unreasonable and awarded reparation. Subsequently, March 3, 1914, we set aside our order and reopened the cases for further consideration on the record made.

We have reconsidered the situation and adhere to the conclusions reached in our previous report. Our previous order requiring reparation accordingly will be reentered.

¹ The proceeding also embraces complaints in—No. 4069 (Sub-No. 1), Calcasieu Long Leaf Lumber Co. v. Louisiana & Pacific Railway Co. et al.; No. 4069 (Sub-No. 2), Lufkin Land & Lumber Co. v. St. Louis Southwestern Railway Company of Texas et al.; No. 4069 (Sub-No. 3), Hudson River Lumber Co. v. Louisiana & Pacific Railway Co. et al.; and No. 4069 (Sub-No. 4), King-Ryder Lumber Co. v. Louisiana & Pacific Railway Co. et al.

No. 6000.
FEDERAL GLASS COMPANY ET AL.
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted November 11, 1915. Decided March 1, 1916.

Denial of reparation on account of rates found unreasonable reversed on rehearing and reparation awarded on proof of damage to complainants.

H. B. Arnold for complainants.

L. E. Hinkle for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

This case was originally decided February 2, 1915, in connection with *Boldt Co. v. C., R. I. & P. Ry. Co.*, 33 I. C. C., 8. We held that rates on glass sand in carloads of \$2.18 per net ton from Ottawa, Ill., to Columbus and Mount Vernon, Ohio, \$2.40 from Ottawa to Lancaster and Zanesville, Ohio, and \$2.60 from Ottawa to Barnesville, Ohio, were unreasonable; and prescribed rates of \$2 to Columbus and Mount Vernon, \$2.20 to Lancaster and Zanesville, and \$2.40 to Barnesville. Reparation was asked but was denied. We allowed the restoration of a rate of \$1.80 per net ton from Ottawa to Cincinnati, Ohio, which had been reduced to \$1.60 in compliance with our order in *Boldt Co. v. C., R. I. & P. Ry. Co.*, 27 I. C. C., 11, decided May 5, 1913. The case was reopened at complainants' instance for further evidence on the question whether complainants were entitled to an award of reparation under our findings concerning the unreasonableness of the rates in issue. Further hearing has been had.

Complainants' prayers for reparation are not based on any unjust discrimination effected by the rates assailed. They invoke the principle enunciated in *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, and cases referred to therein, that "the party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable by us," and contend that the rates attacked were unreasonable during the entire period from August 4, 1911, two years prior to the filing of the original complaint herein, to April 1, 1915, the effective date of our order prescribing the rates now in effect. Our refusal in some cases to award reparation where an existing rate has been found to be unreasonable has not conflicted with this principle, for a rate

which is unreasonable when a case is heard or decided may not have been unreasonable when the shipments upon which reparation is asked moved. Defendants cite *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, wherein we found rates unreasonable but denied reparation. We observed in that case that a much more satisfactory basis for an award of reparation is afforded when a rate is increased and the increased rate is condemned by the amount of the increase than when the rate attacked is the result of reductions. The rates there assailed were lower than the rates previously in effect and had not been complained of in the past. One of the complainants now before us has been complaining to defendants of the rate to Columbus since 1904. The rates assailed were the result of increases, and the rates prescribed in our original report are the same as those originally established by the defendants in 1900.

It is unnecessary to enter into an extended review of the testimony of record, as our original report sets forth the more important facts and circumstances upon which our findings were based. Complainants have shown that these facts and circumstances, as well as others which were considered but not specifically referred to in the report, were not peculiar to the moment when the complaint was filed or to the moment when the case was decided, but that they had undergone no substantial change during the two years immediately preceding the filing of the complaint and that some of them had existed for a number of years prior thereto.

We find that the rates involved were unreasonable during the entire period from August 4, 1911, until the effective date of our former order; that complainants made the shipments set forth in statements filed of record at the rehearing and paid and bore the freight charges thereon; that they have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates found reasonable in our former opinion herein; and that they are entitled to reparation with interest. Complainants accordingly should prepare a statement showing, as to each shipment on which reparation is claimed, the date of movement, points of origin and destination, route, weight, car number and initials, rates applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants, we will consider the entry of an order awarding reparation.

88 I. C. C.

No. 7521.

MEEKER & COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted April 21, 1915. Decided March 4, 1916.

The complaint alleges that the rates applicable on anthracite coal in carloads from Mocanaqua, Pa., and other points in the Wyoming coal region of Pennsylvania to Elizabethport, N. J., f. o. b. vessels for reshipment, are unreasonable; *Held*:

1. That reasonable maximum rates for the future have been prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220.
2. That the question of reparation be held in abeyance for determination in a supplemental proceeding.

R. D. Jenks, W. A. Glasgow, jr., and J. A. Garver for complainant.
J. E. Reynolds for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is Henry E. Meeker, an individual engaged in the coal business under the name of Meeker & Company, with his principal office at New York, N. Y. By complaint, filed November 28, 1914, he alleges that the rates charged by defendant for the transportation of anthracite coal from the Melville colliery at Mocanaqua, Pa., and from other collieries in the Wyoming coal region of Pennsylvania to tidewater at Elizabethport, N. J., f. o. b. vessels for reshipment, are unreasonable and unjustly discriminatory. Reparation is asked on all shipments made within two years before the complaint was filed. The testimony adduced relates principally to the rates from the Melville colliery, but the briefs filed and the oral argument show plainly that complainant does not seek different rates from Melville colliery than from the Wyoming region, and the case will be considered as involving the rates from the Wyoming region.

The rates assailed, per gross ton, delivered free on board vessels are as follows:

On prepared sizes.....	\$1. 55
Pea.....	1. 40
Buck No. 1.....	1. 20
Buck Nos. 2 and 3 or smaller sizes.....	1. 10

Complainant alleges that these rates are unreasonable and unjustly discriminatory to the extent that they exceed 90 cents per gross ton on prepared sizes with corresponding rates on the other sizes. The parties agreed at the hearing that certain portions of the evidence in Docket No. 4914, *Rates for Transportation of Anthracite Coal*, since reported in 35 I. C. C., 220; in Docket No. 6189, *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, since reported in 37 I. C. C., 460; and in Docket No. 6770, *Dodson & Co. v. Same*, 38 I. C. C., 206, should be considered in this case also.

Just and reasonable maximum rates governing traffic of the kind involved from the coal region affected were prescribed in *Rates for Transportation of Anthracite Coal*, *supra*, and no reason appears in this proceeding for any modification of our order in that case. We reserve the question of reparation which calls for the consideration of matters such as were put in evidence in the *Anthracite Case*, *supra*. Further hearing will be had accordingly, and in the meantime no order will be entered.

38 I. C. C.

No. 7578.

OSCEOLA MILL & ELEVATOR COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAIL-
WAY COMPANY ET AL.

Submitted September 8, 1915. Decided March 1, 1916.

Charge of \$5 in addition to freight charges assessed by each of defendants for the transportation of a mixed carload of oats and speltz separated by bulkhead, from Heaton, N. Dak., to Minneapolis, Minn., and reconsigned to Osceola, Wis., found to be in accordance with tariff provisions applicable and not found unreasonable. Complaint dismissed.

C. C. Ladd for complainants.

A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain business at Osceola, Wis. By complaint, filed December 15, 1914, it alleges that a charge of \$10 in addition to the freight charges assessed by defendants for the transportation of a mixed carload of oats and speltz, separated by bulkhead, shipped June 20, 1914, from Heaton, N. Dak., to Minneapolis, Minn., reconsigned to Osceola, was unjust and unreasonable. Reparation is asked in the sum of \$5.

Heaton is on the Northern Pacific Railway, 396 miles northwest of Minneapolis. Osceola is on the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, 43 miles northeast of Minneapolis. The shipment consisted of 34,380 pounds of bulk speltz and 25,100 pounds of bulk oats, separated by a bulkhead. There was no joint rate in effect from Heaton to Osceola. When the car arrived in Minneapolis charges were collected from the consignee at the rate applicable to that point, plus a bulkhead charge of \$5. Complainant purchased the grain at Minneapolis and reshipped it to Osceola, paying the local rate of the Soo line from Minneapolis to Osceola plus the bulkhead charge of \$5. The collection of the \$5 charge just named is the cause of the complaint.

The Northern Pacific Railway tariff applicable to the movement from Heaton to Minneapolis contained the following rule:

Mixed carload shipments of grain, flax, and millet seed, when made in bulk, separated by temporary partitions, will be charged \$5 per car in addition to the
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rates shown in tariff, providing shipments are made at owners' risk of mixing the partitions to be put in and removed at the expense and risk of the owner or shipper without injury to the car * * *.

and a rule to the same effect applied in connection with bulkheaded shipments transported by the Soo line.

Complainant contends that the transportation from Heaton to Osceola was a single movement; that the charge for the separation of the grain by bulkhead should not have been collected by the Soo line at Osceola, as it had been collected previously by the Northern Pacific Railway at Minneapolis upon the arrival of the shipment from Heaton, and that as the same bulkhead was used from Heaton to Osceola a single charge for the separation of the grain by bulkhead should have been made.

The tariff of the Northern Pacific Railway applicable from Heaton to Minneapolis and of the Soo line applicable from Minneapolis to Osceola each provided for a \$5 charge in addition to the rate for the transportation of mixed shipments of grain in bulk when separated by a bulkhead. The charges collected were therefore in accordance with the provisions of the tariffs lawfully applicable. The tariff rule above quoted is uniformly applied on the lines of carriers throughout the territory of origin and destination involved. In the absence of a rule to this effect shippers would be forced to sack all but one of the kinds of grain in order to make mixed shipments. It is not of record what elements enter into the determination of the charge for the privilege of forwarding two kinds of grain separated by bulkhead. No details whatever are given. And complainant offered no evidence in support of its contention that the charge was unreasonable. Defendants contend that their tariffs were designed to cover shipments of the kind involved. The transportation of the grain from Heaton to Osceola comprised two distinct local movements. If a through shipment had been made, either at a joint rate or a combination rate, a different situation might have been presented. As to that, we express no opinion at this time.

We find that the charge assailed is not shown to have been unlawful or unreasonable, and the complaint will be dismissed.

38 I. C. C.

No. 7694.
C. REISS COAL COMPANY
v.
ANN ARBOR RAILROAD COMPANY.

Submitted November 8, 1915. Decided March 4, 1916.

Demurrage charges, due to inadvertent cancellation of free-time provision, collected on coal in carloads held for reconsignment at Frankfort, Mich., found to have been unreasonable and reparation awarded.

J. E. Chandler for complainant.

H. S. Bradley for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale coal business, with its principal office at Sheboygan, Wis. By complaint filed January 23, 1915, it alleges that the demurrage collected by defendant on 22 cars of coal held for reconsignment at Frankfort, Mich., between December 24, 1913, and January 15, 1914, was unreasonable. Reparation is asked.

Prior to December 22, 1913, defendant's tariff provided:

Coal may be held at Frankfort, Mich., for reconsignment and will be reconsigned free. Coal so held at Frankfort, Mich., will be allowed five days' free time without charge for demurrage, after which time \$1 per car per day will be charged for each day or fraction thereof.

Effective December 22, 1913, this rule was canceled, leaving only the usual 24 hours' free holding time. Effective March 6, 1914, the rule quoted was restored. The shipments involved were held at Frankfort for reconsignment during the period when the rule quoted was not in effect. Demurrage charges were collected in the sum of \$62, at a rate of \$1 per day for each car held over 24 hours. None of the shipments was held more than five days, excluding Sundays and legal holidays.

Defendant states that the cancellation of the provision allowing five days' free time was due to an oversight on its part, admits that the charges were unreasonable, and expresses willingness to make reparation. It appears that as soon as the inadvertent cancellation was discovered defendant undertook the restoration of the rule, which, as above stated, was effected March 6, 1914.

Upon the record we find that complainant paid and bore charges in accordance with the foregoing statement; that the collection of the charges was unreasonable; that complainant was damaged thereby, and is entitled to reparation, in the sum of \$62, with interest, for which an order will be entered.

No. 7723.

DULUTH LOG COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAIL-
WAY COMPANY ET AL.

Submitted September 16, 1915. Decided March 1, 1916.

Rate applicable to the transportation of a carload of posts from Remer, Minn., to Benld, Ill., not shown to have been unreasonable. Complaint dismissed.

V. A. Anderson for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business with its principal office at Duluth, Minn. By complaint, filed January 18, 1915, it alleges that the rate of 25½ cents per 100 pounds charged by defendants for the transportation of a carload of posts from Remer, Minn., to Benld, Ill., was unjust and unreasonable to the extent that it exceeded 22 cents per 100 pounds. Reparation is asked.

The shipment weighed 36,100 pounds and moved April 16, 1914, over the Minneapolis, St. Paul, and Sault Ste. Marie Railway to Chicago, and thence over the Chicago & Eastern Illinois and the Illinois Traction system to Benld. Charges were collected in the sum of \$92.06, at a combination rate of 25½ cents per 100 pounds: 16 cents to Chicago and 9½ cents beyond. The bill of lading was not filed of record and if the shipment originated at Remer, as alleged by complainant and admitted by the originating carrier, the rate legally applicable was 24½ cents: 15 cents to Chicago and 9½ cents beyond. Apparently, therefore, the shipment was overcharged.

33 I. C. C.

Effective December 15, 1914, at complainant's request, defendant, Minneapolis, St. Paul & Sault Ste. Marie Railway, established a joint rate of 22 cents per 100 pounds from Remer to Benld by way of Fond du Lac, Wis., and the Chicago & North Western. The distance over this route is 815 miles, as compared with 861 miles over the route of movement. Complainant contends that the rate charged was unreasonable to the extent that it exceeded the rate subsequently established. The establishment of a joint rate from Remer to Benld over a different route from the route of movement is not enough to condemn the combination rate applicable over the route of movement.

We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed. If the shipment was overcharged defendants should make refund promptly.

38 I. C. C.

No. 7973.
PHILLIPS COAL COMPANY
v.
SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY
ET AL.

Submitted September 20, 1915. Decided March 1, 1916.

Complaint asking reparation on a motorcycle shipped from Corpus Christi, Tex., to Ottumwa, Iowa, dismissed for want of sufficient evidence.

F. W. Knoche for complainant.

K. F. Burgess for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in mining coal, with its principal office at Ottumwa, Iowa. By complaint, filed May 3, 1915, it alleges that two and one-half times the first-class rate charged for the transportation of a motorcycle in April, 1912, from Corpus Christi, Tex., to Ottumwa, is unreasonable to the extent that it exceeded one and one-half times the first-class rate. Reparation is asked. The claim was presented to the Commission informally December 16, 1912.

The shipment was subject to western classification. The rating contended for was established in that classification effective January 15, 1913, and now obtains. No one with personal knowledge of the facts concerning the shipment appeared at the hearing, while the bill of lading covering the shipment, filed in the record, shows that complainant was neither the consignor nor the consignee of the shipment. On such a record reparation can not be awarded.

An order dismissing the complaint will be entered.

No. 7767.

TEXARKANA PIPE WORKS

v.

BEAUMONT, SOUR LAKE & WESTERN RAILWAY
COMPANY ET AL.

Submitted May 3, 1915. Decided March 1, 1916.

A carload of sewer pipe was forwarded by the initial carrier from Texarkana, Tex., to Brownsville, Tex., over an interstate route by which the rate was higher than by an intrastate route; *Held*, That the shipment was misrouted and that complainant is entitled to reparation on the basis of the rate contemporaneously in effect over the intrastate route.

F. E. Potts for complainant.

George Helme for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is Walter S. Dickey, engaged in the manufacture and sale of sewer pipe and other clay products under the name of Texarkana Pipe Works, with his principal place of business at Texarkana, Ark.-Tex. By complaint, filed February 23, 1915, he alleges that the rate of 38 cents per 100 pounds charged by defendants for the transportation of a carload of sewer pipe shipped May 19, 1911, interstate from Texarkana, Tex., to Brownsville, Tex., was unreasonable to the extent that it exceeded 22 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally December 10, 1912.

The shipment weighed 27,699 pounds and was delivered to the Texarkana & Fort Smith Railway Company at Texarkana. The bill of lading bore the following notation: "KCS c-o BSL&W c-o St. LB&M. Texas R. R. Comm. 23¢." The initial carrier, without inquiring of the shipper whether the rate or route should apply, forwarded the shipment over the route designated in the bill of lading, which involved a haul through the state of Louisiana. Charges were collected in the sum of \$105.27, based on the published interstate rate of 38 cents per 100 pounds. Complainant contends that as the 23-cent rate did not apply by the route noted in the bill of lading it was the duty of the carrier, under Conference Ruling 286 (f), to ask for more definite instructions. Defendants admit that the shipment could

have been moved by the line of the initial carrier to Bloomburg, Tex., thence by the Texas, Arkansas & Louisiana Railway to Atlanta, Tex., thence by the Texas & Pacific Railway to Longview, Tex., thence by the International & Great Northern Railway to Houston, Tex., and thence by the St. Louis, Brownsville & Mexico Railway to destination. This route is entirely intrastate. Brownsville is 699 miles from Texarkana over this intrastate route and 743 miles over the interstate route. Complainant and defendants agree that a rate of 22 cents applied by the intrastate route, and the Railroad Commission of Texas certifies that this rate was effective on sewer pipe moved intrastate May 19, 1911. Testimony was introduced showing that the interstate rate was subsequently reduced to the level of the intrastate rate, and it was admitted by the defendants that the rate charged was unreasonable to the extent that it exceeded the intrastate rate. Nevertheless, there is not sufficient testimony to warrant a finding with respect to the reasonableness of the rate by route of movement.

We find that the Texarkana & Fort Smith Railway Company misrouted the shipment; that complainant paid and bore the charges and was damaged thereby to the extent of the difference between the charges paid and the charges that would have accrued if the shipment had moved over the intrastate route described, and that complainant is entitled to reparation from the Texarkana & Fort Smith Railway Company in the sum of \$44.33, with interest from May 26, 1911. An order will be entered accordingly.

33 I. C. C.

No. 7772.

JOHNSTON & SHARPE MANUFACTURING COMPANY

v.

**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY.**

Submitted September 10, 1915. Decided March 1, 1916.

Following *Western Classification No. 51*, 25 I. C. C., 442, 541, first-class rating applied by defendants to the transportation of less-than-carload shipments of mousetraps from Ottumwa, Iowa, to St. Joseph, Mo., and Atchison, Kans., not found unreasonable. Complaint dismissed.

F. W. Knoche for complainant.

R. C. Fyfe for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of mousetraps at Ottumwa, Iowa. By complaint, filed February 23, 1915, it alleges that the first-class rate of 54 cents per 100 pounds charged by defendant for the transportation of two less-than-carload shipments of mousetraps from Ottumwa, Iowa, to St. Joseph, Mo., and Atchison, Kans., in September, 1914, was unjust and unreasonable to the extent that it exceeded the second-class rate of 45 cents per 100 pounds applicable from and to the same points. Reparation is asked in the complaint, but the claim has since been withdrawn. On the other hand, a second-class rating is now asked to all destinations throughout the country, but the complaint is not broad enough to involve any rating other than that applicable in western classification territory.

Mousetraps are rated identically in all three general classifications, western, official, and southern. The ratings provided were considered in *Western Classification No. 51*, 25 I. C. C., 442, 541, and approved as follows:

Traps, bird, mouse, or rat:

Flat—

In bundles	1
In barrels, boxes, or crates	2

Other than flat—

In bundles	1½
In barrels, boxes, or crates	1

Complainant's mousetraps are made of steel. They are about 3 inches long, 3 inches wide, and $1\frac{1}{4}$ inches high, and are packed in paper cartons, 12 traps to a carton, the filled carton weighing 18 ounces. Sixty cartons, or five gross of traps, weighing $13\frac{1}{4}$ pounds per gross, are packed in a heavy case or box of a shipping weight of 100 pounds. The package is valued at \$17.50 and occupies 4.16 cubic feet.

Complainant cites various articles rated second class, such as wire traps, sash pulleys, and flour sifters. Defendant urges that there is no analogy between mousetraps and the articles cited by complainant, and emphasizes the prevalence of the classification assailed, stating that the question involved has often been considered by the Western Classification Committee.

Complainant has submitted no evidence which warrants a modification of our former conclusion, and we find that the rating assailed is not shown to be unreasonable. The complaint accordingly will be dismissed.

38 I. C. C.

No. 7798.

METROPOLITAN PAVING BRICK COMPANY

v.

WHEELING & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted September 24, 1915. Decided March 4, 1916.

Certain shipments of brick from Canton, Ohio, to Long Branch, N. J., found not to have been misrouted and rate assessed not found unreasonable. Complaint dismissed.

J. G. Barbour for complainant.

Edward Briggs for Wheeling & Lake Erie Railroad Company and Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

By THE COMMISSION :

Complainant is a corporation engaged in the manufacture and sale of brick and clay products with headquarters at Canton, Ohio. By complaint, filed March 1, 1915, it alleges that the joint rate charged by defendants for the transportation of 57 carloads of paving blocks from Canton to Long Branch, N. J., during the period from August 1, 1913, to September 3, 1913, was unreasonable and in violation of the aggregate of intermediate rates rule of the fourth section of the act. Reparation is asked.

Long Branch is on the New York & Long Branch Railroad between South Amboy and Manasquan, N. J. Freight was interchanged between the Pennsylvania Railroad and the New York & Long Branch Railroad during the period covered by this complaint at both points, and a joint rate of \$4 per net ton applied on paving block in carloads from Canton to Long Branch by way of both points. The bills of lading covering the cars involved carried routing instructions by the shipper, "via Empire line," and under tariffs lawfully in effect the Pennsylvania Railroad was at liberty to make delivery to the New York & Long Branch Railroad either at South Amboy or Manasquan. For some reason not apparent of record, delivery was made at Manasquan. Charges were collected at the \$4 per ton rate applicable. The rates to and from South Amboy aggregated only \$3.80 per net ton, being \$3 to South Amboy and 80 cents beyond; and on September 9, 1913, the joint rate from Canton to Long Branch by way of South Amboy was reduced to \$3.80. On

December 15, 1913, Manasquan was eliminated as an interchange point between the Pennsylvania and the New York & Long Branch railroads. The \$3.80 rate remained in effect until January 15, 1915, when it was increased to \$4. On March 25, 1915, it was further increased to \$4.14 per ton.

Defendants admit that the rate charged was unreasonable and are willing to make reparation on the basis of \$3.80 per ton. Nevertheless, they have not established this rate over the route of movement and do not propose to do so.

Two routes were available under complainant's routing instructions, and the same rate applied over both routes. The route of movement is not shown to have been unreasonable and no evidence was offered against the \$4 rate over that route. In *Paine Lumber Co. v. C., C. & St. L. Ry. Co.*, 24 I. C. C., 626, we held that a shipment forwarded over an available and reasonable route that complied with the shippers' routing instructions and by which the lowest lawful rate between the points there involved was applicable was not misrouted, and that no presumption of unreasonableness attached to a joint through rate applicable over a particular route because it exceeded the aggregate of intermediate rates over another route.

We find that the shipments involved were not misrouted and that the facts of record are not sufficient to establish the unreasonableness of the rate charged over the route of movement.

The complaint will be dismissed.

38 I. C. C.

No. 7818.
BERRY COAL & COKE COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted July 20, 1915. Decided March 4, 1916.

Rate charged for the transportation of a carload of blacksmith coal from Chicago, Ill., to Twin Falls, Idaho, not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

F. H. Curran for complainant.

L. T. Wilcox for Union Pacific Railroad Company and Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the coal and coke business at Chicago, Ill. By complaint, filed March 6, 1915, it alleges that the charges collected by defendants for the transportation of a carload of soft coal from Chicago to Twin Falls, Idaho, were unreasonable, unjustly discriminatory, and in violation of section 4 of the act. Reparation is asked and the establishment of a reasonable rate for the future.

The shipment consisted of 61,500 pounds of blacksmith coal and moved November 24, 1913, by way of the Chicago & North Western Railway, the Union Pacific Railroad, and the Oregon Short Line Railroad. Charges were collected in the sum of \$271.11 at a joint rate of 44 cents per 100 pounds, \$8.80 per ton, on which basis there appears to be an overcharge of 51 cents. A combination rate of \$10.25 per net ton was contemporaneously in effect over the same route: \$2.25 per ton to Omaha, Nebr., and 40 cents per 100 pounds, or \$8 per ton, from Omaha to Twin Falls, applicable to "soft coal, including blacksmith coal." A note in the tariff restricted the application of the 40-cent rate for the movement beyond Omaha to blacksmith coal and provided a rate of 30 cents per 100 pounds, \$6 per ton, on soft coal other than blacksmith coal. Effective May 15, 1915, the 30-cent rate on soft coal was increased to 40 cents, with the result that blacksmith coal and other soft coal are now on the same basis. There has been

no change in the through rate, but the Chicago-Omaha component of the combination rate has been increased 10 cents per ton following our order in the *1915 Western Rate Advance Case*, 35 I. C. C., 497.

The allegations that the rate charged was unjustly discriminatory and in violation of section 4 rest on the assumption that the 30-cent Omaha-Twin Falls component was applicable to the shipment and that the Omaha combination was lower than the through rate. The inapplicability of this 30-cent rate to blacksmith coal evidently was overlooked and also the fact that the combination rate which would have applied if the through rate had been canceled amounted to \$10.25 per ton. Complainant assails the distinction made in the rates on blacksmith coal and other soft coal, and in support of its contention compares their respective values at the mines. Value, however, is not the sole criterion of the reasonableness of a rate, and no other convincing evidence is adduced. Defendants, on the other hand, assert that lower rates on other soft coal than on blacksmith coal have been in effect for a number of years from Omaha and other Missouri River points, having been established originally to provide an outlet for Kansas coal. It is also shown that the 44-cent rate charged from Chicago to Twin Falls, 1,676 miles, yields 5.3 mills per ton-mile, and that a portion of the haul is over branch lines through sparsely settled country.

We find that the charges collected are not shown to have been unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

38 I. C. C.

No. 7822.

LEVERING BROTHERS

v.

**PHILADELPHIA, BALTIMORE & WASHINGTON RAIL-
ROAD COMPANY ET AL.**

Submitted November 4, 1915. Decided March 1, 1916.

Charges assessed by the delivering carrier for the storage of two carloads of scrap tin at Elizabethport, N. J., not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

R. A. Koontz for complainants.

A. W. Rinke for Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Wilson K. Levering and Ernest D. Levering, copartners, dealing in scrap metals, with their principal office at Baltimore, Md. By complaint, filed March 9, 1915, they allege that the storage charges imposed by defendant, Central Railroad Company of New Jersey, hereinafter called the Central, for the storage of two carloads of scrap tin shipped from Deanwood, D. C., to Sewaren, N. J., were unreasonable and unjustly discriminatory. No reparation is asked; only that the Central may be required to cease and desist in its demand for the storage charges of \$302 imposed.

Complainants forwarded two carloads of old tin cans and scrap tin from Deanwood to Sewaren, in August, 1913, consigned to the Vulcan Detinning Company at Sewaren. The cars arrived at destination August 13 and August 23, 1913, when they were placed in the consignee's yard. The consignee refused to accept them on August 19 and August 25, 1913, respectively. The Central, the delivering carrier, notified complainants of the refusals on the identical days on which they occurred and requested instructions relative to the disposition of the shipments, but in order to release its equipment moved the cars to Elizabethport, 16 miles from Sewaren, where its storehouse for refused and unclaimed freight is located. There was no available space in the storehouse at the time and the cars were unloaded in the open, adjacent to the building. As no reply had been received from complainants to the request for disposition instructions, additional requests for instructions were sent to complainants in August, September, and October, 1913. On October

25, 1913, complainants were notified that the shipments would be sold under the laws of New Jersey, and on April 14, 1914, the goods were sold at public auction for \$1.50.

Complainants admit the propriety of the freight and demurrage charges assessed, but contend that the storage charges, amounting to \$302, were unjust, unreasonable, and otherwise in violation of the act.

The storage tariff of the Central in effect at the time provided as follows:

Carload freight which is unloaded by the Central Railroad Company of New Jersey for the purpose of releasing needed equipment will be subject to storage charge, the same as would have accrued under car demurrage rules had the freight remained in the car.

Such charges apply generally on carloads of rough freight and are published by the carriers in trunk line territory in compliance with the provisions of the national car demurrage rules. See also *Parry & Co. v. P. R. R. Co.*, 29 I. C. C., 559.

The rule in issue was adopted to protect the equipment of the carrier from use for warehouse purposes and for the benefit of the public in the speedy release of cars. The rule is not designed to yield a profit to the carrier, but is calculated to deter shippers from occupying carriers' equipment, storage facilities, and rights of way for too long periods.

Complainants estimated the value of the two carloads for detinning purposes at a higher rate than the Vulcan Detinning Company was willing to give. The shipments could have been disposed of to the consignee at a somewhat lower price. If complainants had paid the charges on the shipments when notified of their rejection, disposition of them could have been made without extra expense.

We find that the storage rule was legally applicable to these shipments and that it is not shown to have been unreasonable. The complaint accordingly will be dismissed.

38 I. C. C.

No. 7838.
OMAHA ALFALFA MILLING COMPANY
v.
UNION PACIFIC RAILROAD COMPANY.

Submitted July 21, 1915. Decided March 4, 1916.

Rate of 14 cents per 100 pounds charged for the interstate transportation of carloads of alfalfa meal from Kearney, Nebr., to East Omaha, Nebr., found unjustly discriminatory, but as there is no proof of damage, complaint is dismissed.

E. J. McVann for complainant.

C. B. Matthai for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of animal feed, with its principal place of business at Omaha, Nebr. By complaint, filed March 18, 1915, it alleges that the charges collected by defendant for the interstate transportation of certain carload shipments of alfalfa meal from Kearney, Nebr., to Omaha, were unreasonable. Reparation is asked. The complaint was amended at the hearing to allege unjust discrimination also.

The shipments aggregated 3,266,840 pounds and moved during the period from July, 1913, to August, 1914, over defendant's lines. Complainant's factory is located on the Illinois Central Railroad in what is known locally as East Omaha, but the switching movement from the Illinois Central Railroad Company's yard in Omaha to complainant's factory traverses a narrow strip of land which, although west of the present channel of the Missouri River, is part of the state of Iowa. Defendant first applied the intrastate rate of 10½ cents per 100 pounds specifically limited to intrastate traffic, absorbing the Illinois Central's switching charges under proper tariff provisions. Later, it collected charges at the legal interstate rate of 14 cents per 100 pounds. All other shippers from the same points of origin to Omaha were charged the 10½-cent rate and defendant has since extended this rate to interstate traffic, by tariffs effective September 10, 1914.

Defendant admits discrimination against complainant and is willing to make reparation. It does not admit, however, that the 14-cent

88 I. C. C.

rate assailed was an unreasonable rate, explaining that the Nebraska State Railway Commission required the reduction of the rate on alfalfa meal from Kearney to Omaha to $10\frac{1}{2}$ cents, which rendered the 14-cent interstate rate impracticable for the reason that shippers defeated it by billing their shipments locally to Omaha and rebilling them beyond. The original restriction that the $10\frac{1}{2}$ -cent rate should apply only on intrastate traffic, therefore, was eliminated.

A switching charge of \$3 per car applied specifically on alfalfa meal from defendant's yard in Omaha to complainant's plant. The $10\frac{1}{2}$ -cent intrastate rate was subject to a minimum of 30,000 pounds. These charges aggregated $11\frac{1}{2}$ cents per 100 pounds for minimum carloads, or $2\frac{1}{2}$ cents less than the joint rate assailed.

Other than the establishment of the $10\frac{1}{2}$ -cent rate by the Nebraska State Railway Commission, which rate, of course, was used by shippers in the transportation, wholly within the state of Nebraska, from Kearney to Omaha, there is no testimony or evidence in respect of unreasonableness. Obviously, the 14-cent rate was unjustly discriminatory and we so find, but there is no proof of damage. As the $10\frac{1}{2}$ -cent rate has been in effect for more than a year, no order for the future will be entered. Reparation is denied and the complaint dismissed.

38 I. C. C.

No. 7839.
NATIONAL CLAY WORKS
v.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

Submitted July 8, 1915. Decided March 1, 1916.

Demurrage charges at Mason City, Iowa, on 18 carloads of coal shipped from Panama and Harrisburg, Ill., found to have been assessed unlawfully. Reparation awarded.

E. G. Dunn for complainant.

R. B. Alberson for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of brick, tile, fireproofing, and building blocks at Mason City, Iowa. By complaint, filed March 18, 1915, it alleges that demurrage charges collected by defendant at Mason City on 13 carloads of coal shipped from Panama and Harrisburg, Ill., in September and October, 1912, were unjust and unreasonable. Reparation is asked. The claim was presented to the Commission informally October 1, 1914.

The shipments arrived in Mason City on various dates during October and November, 1912, intended for delivery at complainant's plant, located on a sidetrack of the Chicago, Milwaukee & St. Paul Railway, about 2 miles from defendant's yards. It had been agreed between complainant and defendant that notice of the arrival of cars should be given by telephone, and such notices were given promptly each day as the cars arrived. On receipt of such notices complainant directed the delivery of the cars at its plant. Defendant refused to deliver the cars to the Chicago, Milwaukee & St. Paul until the freight and demurrage charges, as they accrued, should be paid. Complainant had been on defendant's credit list, but had recently been struck from the list because of arrears approximating \$2,500. The record discloses that complainant's credit became bad because of rumors concerning its financial standing which were subsequently found to be groundless. On various dates during December, 1912, complainant paid, under protest, the charges demanded, and the cars were released for delivery. The demurrage charges aggregated \$358.

Complainant's witness testified that it was willing to pay the freight charges when the cars were delivered to its sidetrack or when placed on the transfer track of the Chicago, Milwaukee & St. Paul, stating that it desired them placed on the transfer track before paying the freight charges because experience had shown that its cars might be delayed or delivered to other plants. Complainant's witness was not positive, however, that the placing of the cars on the transfer track had been demanded before paying the freight charges; only that it offered to pay those charges if defendant would deliver some of the cars and thrash out the question of demurrage later.

The amount of the demurrage is not questioned. Complainant, under change of corporate name to the Farmers Cooperative Brick & Tile Company, paid and bore the charges. The joint rate applied to the shipments included delivery to the switching line. Defendant's tariffs did not provide for the payment of freight and demurrage charges as a prerequisite to the release of cars to the switching line. The case is analogous to *Este Co. v. A. C. L. R. R. Co.*, 34 I. C. C., 469, in which we held that where a tariff provided a through rate which included a terminal switching charge, demurrage charges collected as a result of the detention of the car from the switching line were unlawful.

We find that the demurrage charges involved were assessed unlawfully, that complainant has been damaged to the extent of the unlawful charges so imposed, and that it is entitled to reparation in the sum of \$358, with interest from December 9, 1912.

An appropriate order will be entered.

38 I. C. C.

No. 7968.

COFFEYVILLE VITRIFIED BRICK & TILE COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted September 21, 1915. Decided March 4, 1916.

Rate of 11 cents per 100 pounds charged for the transportation of paving bricks in carloads from Boynton, Okla., to Denison, Paris, and Dallas, Tex., found to have been unreasonable to the extent that it exceeded 6 cents per 100 pounds to Denison, 8 cents per 100 pounds to Paris, and 7½ cents per 100 pounds to Dallas. Reparation awarded.

G. E. Mosher for complainant.

H. C. Conley for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of brick, with its principal office at Coffeyville, Kans. By complaint, filed April 29, 1915, originally received April 5, 1915, but returned for correction, it alleges that a rate of 11 cents per 100 pounds charged by defendants for the transportation of 67 carloads of paving bricks from Boynton, Okla., to Denison, Paris, and Dallas, Tex., between March 10, 1913, and July 17, 1913, was unreasonable to the extent that it exceeded a rate of 6 cents to Denison, a rate of 8 cents to Paris, and a rate of 7½ cents to Dallas. Reparation is asked.

Defendants filed applications on our special docket in April and May, 1914, for permission to make refund on these shipments on the basis of rates subsequently established, but the applications were denied. The formal complaint was received from complainant more than two years after certain of the shipments to Dallas had been delivered and more than six months after complainant had been notified that its claim relative to such shipments could not be disposed of informally. The claim for reparation based on those shipments therefore must be considered abandoned. *Rule III, Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91.

Complainant compares the rates assailed with rates on paving brick to the destinations involved from Coffeyville and Cherryvale, Kans., and Mingus, Tex. Boynton is 187 miles from Denison, 257 miles from Paris, and 272 miles from Dallas. The distances from Cherryvale are 183 miles greater than from Boynton. The short-line

distances from Coffeyville to Denison and Dallas are somewhat less than the distances from Cherryvale by way of defendants' lines. The rate from Cherryvale and other points in the Kansas gas belt to Denison and Paris was 11 cents per 100 pounds; the rate to Dallas, 14 cents. Rates contemporaneously in effect from Mingus, prescribed by the Texas commission, were 6 cents to Denison, 176.8 miles; 7 cents to Paris, 229.6 miles; and $4\frac{1}{2}$ cents to Dallas, 108 miles. Effective June 24, 1913, defendants established a rate of 6 cents from Boynton to Denison and a rate of $7\frac{1}{2}$ cents from Boynton to Dallas. Effective August 1, 1913, a rate of 8 cents was established from Boynton to Paris. These rates are still in force.

Defendants state that they intended to establish the present rates earlier than they did, but that publication was unavoidably delayed by a general readjustment of rates on brick that was made in the early part of 1913. They admit that the 11-cent rate assailed was unreasonable in comparison with rates from Kansas gas belt points and are willing to make reparation. The rate charged yielded 11.7 mills per ton-mile to Denison, 8.5 mills to Paris, and 8.1 mills to Dallas. The present rates yield 6.4 mills per ton-mile to Denison, 6.2 mills to Paris, and 5.5 mills to Dallas.

We find that the rates charged were unreasonable to the extent that they exceeded 6 cents per 100 pounds to Denison, 8 cents per 100 pounds to Paris, and $7\frac{1}{2}$ cents per 100 pounds to Dallas, which we find reasonable; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest on the shipments to Denison and Paris and on such of the shipments to Dallas as were delivered within two years prior to the receipt of the formal complaint, April 5, 1915. The exact amount of reparation due can not be determined from the present record, and complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider the entry of an order awarding reparation. As the present rates have been in effect for more than one year, no order for the future is necessary.

38 I. C. C.

No. 8032.

BEDNA YOUNG LUMBER COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 27, 1915. Decided March 1, 1916.

Carload shipment of oak lumber from Jackson, Tenn., to Preston, Ontario, found to have been misrouted. Reparation awarded.

J. R. Walker for complainant.

R. Walton Moore for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Jackson, Tenn. By complaint, filed May 20, 1915, it alleges that the initial carrier's misrouting of a carload of oak lumber, shipped during September, 1911, from Jackson to Preston, Ontario, involved complainant in the payment of drayage charges that would not have accrued if the shipment had moved over the route specified in the bill of lading. Reparation is asked. The claim was presented to the Commission informally June 11, 1913. The pertinent facts are stipulated.

The shipment was made September 8, 1911, routed by the shipper: Illinois Central to Louisville, care of Baltimore & Ohio South-western; Cincinnati, Hamilton & Dayton; Canadian Pacific delivery. The Canadian Pacific does not reach Preston, but turns over all shipments destined to Preston to the Galt, Preston & Hespeler Railway at Galt, Ontario, 4 miles from Preston. The consignee's plant at Preston is alongside of the tracks of the Galt, Preston & Hespeler Railway. The Illinois Central's agent at Louisville erroneously substituted "Grand Trunk delivery" for "Canadian Pacific delivery" and thereby caused delivery to be made at a point some distance from the consignee's place of business. There was no connection by which the shipment could have been switched to the consignee's sidetrack and the consignee was compelled to dray the lumber to its plant, at an expense of \$14.30. The expense thus incurred appears to have been reasonable in amount, and complainant ultimately bore it.

We find that the shipment was made as described; that the Illinois Central misrouted it; that complainant was damaged thereby in the sum of \$14.30; and that it is entitled to reparation in the sum of \$14.30, with interest from September 29, 1911. An order will be entered accordingly.

No. 8021.

WILHOIT REFINING COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted September 24, 1915. Decided March 1, 1916.

Rate of 13 cents per 100 pounds charged for the transportation of crude petroleum oil in carloads from Cushing, Okla., to Joplin, Mo., found to have been unreasonable and unjustly discriminatory to the extent that it exceeded 10 cents per 100 pounds. Reparation awarded.

S. C. Bates for complainant.

R. D. Williams for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in refining and distributing petroleum oil, with its principal office at Springfield, Mo. By complaint, filed May 15, 1915, it alleges that the rate of 13 cents per 100 pounds charged by defendant for the transportation of 124 carloads of crude petroleum oil in tank cars from Cushing, Okla., to Joplin, Mo., between June 11, 1913, and August 16, 1913, was unreasonable and unjustly discriminatory to the extent that it exceeded 10 cents per 100 pounds. Reparation is asked.

Defendant's lines serve an oil district in Oklahoma about 90 miles long and from 45 miles to 80 miles wide, between Dewey and Vinita on the north and Cushing and Neha on the south, and a group of oil-refining points in southeastern Kansas and southwestern Missouri, of which Chanute, Coffeyville, Erie, Humboldt, Iola, Moran, Paola, and Petrolia, Kans., and Joplin, Mo., are said to be representative. The refining points served are an average distance of 165 miles from the producing section served over defendant's lines, and an average distance of 178 miles from Cushing. Joplin is an average distance

of 182 miles from the producing district served and 196 miles from Cushing.

It has been and still is defendant's policy to maintain equal rates from all points of production in the territory described to the refining points named, and a parity of rates is now maintained on refined products shipped in the opposite direction. The production of oil at Cushing began in January, 1918, and before that date did not extend farther south on defendant's Oklahoma City line than Cleveland, Okla., 82 miles north of Cushing. During the period covered by these shipments, and for some years before, the rate on crude oil, in tank cars, from Cleveland and other points of production on defendant's lines in Oklahoma, except Cushing, to southeastern Kansas refineries and Joplin was 10 cents per 100 pounds. Effective April 5, 1918, the same rate was established from Cushing to the southeastern Kansas refineries, but was not made applicable to Joplin until August 30, 1918. Defendant's failure to apply the 10-cent rate to Joplin when it was first published to southeastern Kansas refineries was wholly unintentional. Complainant's competitors, operating the southeastern Kansas refineries, procured their supplies of crude oil from Cushing under the 10-cent rate, and disposed of the refined products in markets served by complainant. And as they had an advantage of 3 cents per 100 pounds in the rates on crude oil, complainant asserts that its profits had to be shrunk to that extent.

Defendant admits that the rate of 13 cents per 100 pounds charged for the transportation of complainant's shipments was unreasonable and unjustly discriminatory to the extent that it exceeded the rate of 10 cents per 100 pounds contemporaneously applicable from Cushing to southeastern Kansas refineries and from other oil-producing points in Oklahoma to Joplin.

The average weight of the shipments was about 62,000 pounds per car. The 13-cent rate assailed yielded 13.3 mills per ton-mile and 41.2 cents per car-mile. The 10-cent rate since established yields 10.2 mills per ton-mile and 31.6 cents per car-mile. Distances considered, the earnings under the 10-cent rate compare favorably with the earnings found reasonable in *Midcontinent Oil Rates*, 36 I. C. C., 109, under the rates on petroleum oil and its products from the Kansas and Oklahoma fields to Kansas City, St. Louis, Mississippi River, and other points.

We find that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded 10 cents per 100 pounds, which we find to have been reasonable; that complainant made shipments in accordance with the foregoing statement of facts, and paid and bore charges thereon at the rate herein found unreasonable;

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that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared by complainant, and verified by defendant, we will consider the entry of an order awarding reparation.

The 10-cent rate herein found reasonable has been in effect for more than two years, and no order for the future is necessary.

88 I. C. C.

No. 8026.

PRENDERGAST COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted October 23, 1915. Decided March 1, 1916.

Rate charged for the transportation of a carload of yellow-pine lumber from Akron, Ala., to Richelieu, Quebec, not shown to have been unreasonable or unjustly discriminatory, and complaint dismissed.

J. B. Quinn for complainant.

E. H. Hart, jr., for Alabama Great Southern Railroad Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Cincinnati Northern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business with its principal office at Marion, Ohio. By complaint, filed May 13, 1915, it alleged that the rate charged by defendants for the transportation of a carload of yellow-pine lumber from Akron, Ala., to Richelieu, Quebec, on July 3, 1914, was unreasonable and unjustly discriminatory. Reparation is asked.

The shipment was consigned originally to complainant at Cincinnati, but was reconsigned in transit under proper tariff provision to Richelieu. Charges were collected at a joint rate of 40 cents per 100 pounds for the through transportation. Richelieu is a local point on the Central Vermont Railway, which is a part of the Grand Trunk system, 21 miles from Montreal, Quebec, which is served by the Grand Trunk and other roads. The joint rate on lumber in carloads from Akron to Montreal was and is 34 cents per 100 pounds. Complainant contends that the rate to Richelieu should not exceed 34 cents, and that it is unreasonable to construct the rate to Richelieu by the addition of a 6-cent arbitrary over Montreal. Complainant also states that tariffs in effect at the time of movement provided generally for the application of equal rates to Montreal and to Richelieu on shipments from the south and west, but defendants deny the statement, and the tariffs disclose differences in the rates

from many southern points besides Akron. On the other hand, equal rates applied and still apply on lumber to Montreal and Richelieu from Ohio River crossings.

Defendants admit that the rates from Akron to Montreal and Richelieu should be the same, and indicate that the Montreal rate would have been increased before this if numerous rate cases before the Commission had not interfered with their plans. Lumber rates from points in the south to northern destinations are customarily made by adding to the locals or proportionals to the Ohio River crossings or Virginia cities the rates or authorized specifics of the northern lines, the lowest resulting rate being made applicable via the different routes. The 40-cent joint rate from Akron to Richelieu is made on the usual basis, being composed of the proportional of 20 cents to Hagerstown and Potomac Yard, or 17 cents to Richmond, plus the northern lines' specifics of 20 cents and 23 cents, respectively. This rate was established in 1910. The Cincinnati combination at that time and until the 5 per cent increase authorized in *The Five Per Cent Case*, 32 I. C. C., 325, was 40½ cents. Defendants' witness stated that the equality between the joint rate charged and the combination on Montreal was purely accidental. Defendants show that from the greater portion of the state of Georgia the lumber rate to Richelieu was 40 cents, although the distance to Richelieu was less than from Akron, and that from practically all points in Alabama east and south of Akron the rates to Richelieu ranged from 40 cents to 42 cents. The Alabama Great Southern Railroad states that some time prior to 1900 the rate to Montreal was made the same as the rate to Boston, at the request of the Canadian roads, which were buying large quantities of yellow-pine lumber for their own use. From the greater portion of Georgia and Alabama the rates to Montreal and Richelieu were the same with the exception of Alabama Great Southern points, competitive points on other lines, and farther distant points from which such competitive points were intermediate.

We find that the rate assailed is not shown to have been unreasonable or unjustly discriminatory, and an order will be entered dismissing the complaint.

33 I. C. C.

No. 8042.

DRAKE MARBLE & TILE COMPANY

v.

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY ET AL.**

Submitted September 11, 1915. Decided March 4, 1916.

A less-than-carload shipment of floor and wall tile from Indianapolis, Ind., to Belle Plaine, Minn., found to have been overcharged and misrouted. Reparation awarded.

M. W. Loveland for complainant.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago & North Western Railway Company; and Minneapolis & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the stone, marble, and tile business at St. Paul, Minn. By complaint, filed May 24, 1915, it alleges that the rate charged by defendants for the transportation of a less-than-carload shipment of floor and wall tile, shipped October 6, 1913, from Indianapolis, Ind., to Belle Plaine, Minn., was unreasonable, unjustly discriminatory, and in violation of the rules of the fourth section of the act to regulate commerce. Reparation is asked.

The shipment consisted of 19 barrels and 1 box of floor and wall tile, aggregating 5,700 pounds, and was routed by the shipper over the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, from Indianapolis to Peoria, Ill., and thence over the Minneapolis & St. Louis Railroad. The Minneapolis & St. Louis does not serve Belle Plaine, which is a local point on the line of the Chicago, St. Paul, Minneapolis & Omaha Railway, the Omaha line, and accordingly delivered the shipment to the Chicago & North Western Railway at Marshalltown, Iowa, for transportation in connection with the Omaha line to destination. Charges were collected in the sum of \$60.36, but at what rate does not appear of record. There was no joint rate in effect over the route of movement, and the legal combination rate was 66 cents: 17½ cents from Indianapolis to Peoria; 23½ cents from Peoria to Marshalltown; 25 cents

beyond. The legal charges over the route of movement at this rate would have aggregated \$37.62, and the shipment was overcharged \$22.74.

Complainant shows that under the tariffs in effect when the shipment moved the Minneapolis & St. Louis Railroad could have routed the shipment to Merriam, Minn., a junction with the Omaha 13 miles from Belle Plaine and thence by way of the Omaha, at a through rate of 48.3 cents, composed of a joint rate of 41 cents from Indianapolis to Merriam applicable by way of the Big Four and the Minneapolis & St. Louis Railroad, and a fourth-class rate of 7.3 cents from Merriam to Belle Plaine by way of the Omaha. Defendants admit that the shipment was misrouted and express willingness to make reparation in the sum of \$32.83 on the basis of the 48.3-cent rate described.

Complainant further contends that the rate charged was unreasonable to the extent that it exceeded 41 cents per 100 pounds. A joint class rate of 41 cents was applicable from Indianapolis to Belle Plaine by way of the Big Four to Peoria and the Chicago & North Western and the Chicago, St. Paul, Minneapolis & Omaha railways to destination. But the Minneapolis & St. Louis Railroad did not participate in this rate.

The alleged violations of the aggregate of intermediate rates rule of the fourth section in that the rate charged exceeded the combination of the rates applicable to and from St. Paul, Merriam, Marshalltown, and Peoria also are unfounded. The lawful rate over the route designated by the shipper does not exceed the intermediate rates to and from any of the points named.

We find that the charges collected were unlawful to the extent that they exceeded the charges that would have accrued at a rate of 48.3 cents per 100 pounds, which rate is not shown to have been unreasonable, unjustly discriminatory, or in violation of the rules of the fourth section; that the shipment was made as described; that complainant paid and bore the charges thereon herein found to have been unlawful; that it has been damaged thereby and is entitled to reparation in the sum of \$32.83, with interest from December 5, 1913: \$22.74 on account of the overcharge described, \$10.09 on account of misrouting, for which we find the Minneapolis & St. Louis Railroad to have been responsible.

An order will be entered accordingly.

38 I. C. C.

No. 8059.
PICHER LEAD COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY.

Submitted September 23, 1915. Decided March 1, 1916.

Rate of 21 cents per 100 pounds charged for the transportation of fire-clay retorts in carloads from Altoona, Kans., to Joplin, Mo., found to have been unreasonable to the extent that it exceeded 8 cents per 100 pounds. Reparation awarded.

C. F. Garesche for complainant.

B. E. Sells for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in smelting at Joplin, Mo. By complaint, filed June 1, 1915, it alleges that the rate of 21 cents per 100 pounds charged by defendant for the transportation of six carloads of fire-clay retorts from Altoona, Kans., to Joplin, between October 25, 1913, and February 21, 1914, was unreasonable and unjustly discriminatory. Reparation is asked.

The shipments aggregated 449,300 pounds and charges were collected by defendant in the sum of \$943.53, exclusive of a switching charge of \$3 per car, which is not attacked. Retorts of the kind involved are cylindrical tubes of fire clay about 4 feet long and 12 inches in diameter, open at both ends, with walls $1\frac{1}{2}$ inches thick, and are said to be identical with fire-clay tile. They are shipped in box cars and are more or less susceptible to damage by breakage. About 500 retorts, worth approximately \$350, constitute an average carload. The volume of movement is comparatively slight, because usually each smelter manufactures its own retorts.

The western classification, which governs traffic between Altoona and Joplin, rates fire-clay retorts in carloads, class B, and fire-clay tile in carloads, class E. The 21-cent rate charged was the class B rate. The class E rate contemporaneously in effect was 9 cents per 100 pounds. The rate on draintile, a somewhat similar commodity, and on fire clay, the raw material from which retorts are made, contemporaneously in effect over defendant's line from Altoona to Joplin, 158 miles, and from Elk City, Kans., to Joplin, 166 miles, was 5

cents per 100 pounds. Complainant also cites rates of 7 cents per 100 pounds on clay conduits, draintile, from Pittsburg, Kans., to Omaha, Nebr., 342 miles, and 10 cents per 100 pounds on fire-clay tile from St. Louis, Mo., to Joplin, 382 miles over defendant's line, and 332 miles over the short line. Effective August 10, 1914, defendant established a commodity rate of 8 cents per 100 pounds on fire-clay retorts in carloads from Altoona to Joplin. Defendant admits that a higher rate was and is unreasonable in comparison with rates on draintile and other clay products, and on fire clay, which is used to some extent for the same purposes as retorts. The average weight of the shipments was about 74,900 pounds per car. The 21-cent rate yielded 27.4 mills per ton-mile and \$1.028 per car-mile. The 8-cent rate yields 10.4 mills per ton-mile on shipments of the same weight per car, and 39 cents per car-mile, as compared with 6 mills per ton-mile and 22.6 cents per car-mile under the 10-cent rate on fire-clay tile from St. Louis to Joplin based on the short-line mileage.

We find that the rate charged was unreasonable to the extent that it exceeded 8 cents per 100 pounds, which we find to have been reasonable; that complainant made the shipments as described and paid and bore charges thereon at the rate found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$584.09, with interest from March 5, 1914. An order will be entered accordingly. As the present rate of 8 cents per 100 pounds has been in effect for more than one year, no order for the future is necessary.

33 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 652.
GRAIN TO CALIFORNIA POINTS.

Submitted February 10, 1916. Decided March 15, 1916.

Proposed changes in the rules relating to the routing and diversion of grain and grain products in carloads from points of origin in Idaho and Utah to Los Angeles, Cal., on the tracks of the Atchison, Topeka & Santa Fe Railway, found justified. Order of suspension vacated.

W. F. Lincoln and *J. E. Kelby* for Oregon Short Line Railroad Company; San Pedro, Los Angeles & Salt Lake Railroad Company; and Union Pacific Railroad Company.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. P. Gregson for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Oregon Short Line Railroad tariff I. C. C. No. 1914, supplement No. 9, filed to take effect June 3, 1915, proposed certain changes relative to the routing and diversion of grain and grain products in carloads from points of origin in Idaho and Utah to Los Angeles, Cal., on the Atchison, Topeka & Santa Fe Railway. Upon protest filed by the Associated Jobbers of Los Angeles the tariff was suspended until April 1, 1916.

Some years ago rates on grain were established from stations on the Oregon Short Line Railroad and the Butte, Anaconda & Pacific Railway to grouped points in southern California on the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter referred to as the Salt Lake route. In 1910 these rates were extended to include San Bernardino, Cal., on the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe. In 1911 and 1914 they were further extended to other stations on the Santa Fe west and south of San Bernardino. At no time have the tariffs expressly specified Los Angeles, on the Santa Fe, as a station to which the rates apply. Los Angeles has been named as a station on the Salt Lake route only. For some years, however, the tariffs naming these rates have contained rules under which the rates to points to which no rates are specifically named are the same as, or no higher than, the rates to the next more distant point on the same road to which rates are named. Since March 6, 1914, the tariff has named San Bernardino, Redlands, Pasadena, Redondo Beach, Fullerton, Anaheim, Santa Ana, Olive, and

San Diego as Santa Fe stations to which the rates apply "via S. P., L. A. & S. L. R. R. to San Bernardino or Los Angeles, Calif."

Of the stations named Redondo Beach is beyond Los Angeles on the Santa Fe both by way of San Bernardino and Los Angeles, and, under the rule for the application of rates to intermediate points, the rates named in the tariff apply to Los Angeles on the Santa Fe.

The suspended item reads, in part, as follows:

Routing via San Bernardino in connection with the Atchison, Topeka & Santa Fe Railway will apply on traffic destined to points on the Atchison, Topeka & Santa Fe Railway other than Los Angeles. Shipments for Los Angeles and destined industrial tracks in Los Angeles on the Atchison, Topeka & Santa Fe Railway will be delivered to that company at Los Angeles only. Shipments delivered to the Atchison, Topeka & Santa Fe Railway at San Bernardino, routed to interior points, will not be diverted to Los Angeles after delivery to that line at San Bernardino, except on basis of combination of rates to and from the point of original destination.

Los Angeles is about 68 miles from San Bernardino by the Salt Lake route and about 60 miles by the Santa Fe, the two lines being substantially parallel. The proposed item is intended to prevent the short hauling of the Salt Lake route to Los Angeles and would result in an additional charge of \$2.50 per car for switching on shipments consigned through to industrial tracks located on the Santa Fe at that place. Cars consigned to other Santa Fe stations and diverted thence to Los Angeles would take a combination rate composed of the group rate to the original destination and the local rate therefrom. The present rates would therefore be increased.

The Salt Lake route asserts that it was never intended that the group rates to southern California points should apply to Los Angeles by way of the Santa Fe, because the Salt Lake route provides rates and services to Los Angeles over its own routes, and that this is apparent from a fair reading of the tariffs. If rates to Los Angeles are now applicable in connection with the Santa Fe by reason of the rules with respect to intermediate stations, the Salt Lake route claims the right to correct the situation, as the statute recognizes the right of the carrier having the long haul to protect its traffic. It explains that the proposed regulation with respect to the diversion of cars to Los Angeles was inserted to prevent shippers from doing indirectly what the new item forbids directly. The *Ogden Gateway Case*, 35 I. C. C., 131, is cited, wherein we said:

We do not perceive from the language of the act that we have any larger or different powers when dealing with tariffs by which it is proposed to cancel an existing through route and existing joint fares applicable thereto than we have in connection with a complaint praying for an order establishing a through route and reasonable and just rates applicable thereto where no such route has already been established.

The entire Salt Lake route for grain from Idaho and Utah points to Los Angeles is not unreasonably long as compared with the route by way of the Salt Lake line to San Bernardino and the Santa Fe line beyond, and under the statute the Salt Lake route could not be required without its consent to surrender traffic destined to Los Angeles to the Santa Fe at San Bernardino.

Protestants urge that the order entered in *Rates on Grain and Grain Products to Stations in California*, Investigation and Suspension Docket No. 506, unreported, forbade the respondents doing what is proposed by the tariff item before us. That order required the respondents to maintain rates to the Santa Fe stations enumerated in tariff I. C. C. No. 1914, which did not include Los Angeles. It appeared in that case, as in this, that the matter involved was substantially a question of divisions between the Salt Lake route and the Santa Fe. The interests of the Santa Fe lead it to align itself with the protestants herein.

Other contentions made by protestants and respondents may be disregarded, as they are not essential to a determination of the real issues. Discrimination is alleged, for example, against industries on the Santa Fe tracks in Los Angeles in favor of industries at other common points, such as Pasadena or Colton. If such discrimination should develop, the matter may be brought to our attention by a formal complaint.

The proposed tariff changes under suspension have been justified, and the order of suspension will be vacated.

INVESTIGATION AND SUSPENSION DOCKET NO. 675.
LUMBER BETWEEN POINTS IN WESTERN TRUNK LINE
TERRITORY.

No. 8142.
NORTHERN PINE MANUFACTURERS ASSOCIATION
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted January 13, 1916. Decided March 14, 1916.

Proposed increased rate of 12 cents on lumber and lumber products from St. Paul, Minneapolis, Duluth, Minnesota Transfer, and Stillwater, Minn., and Ashland, Wis., and points taking same rates, to Chicago and Chicago rate points justified. Formal complaint dismissed.

K. F. Burgess and R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

J. B. Sheean for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

G. A. Kelly for Chicago Great Western Railroad Company.

O. W. Dynes and J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

C. C. Wright and R. H. Widdicombe for Chicago & North Western Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company and Jacob M. Dickinson, receiver.

W. H. Bremner for Minneapolis & St. Louis Railroad Company.

Chas. Donnelly and L. R. Capron for Northern Pacific Railway Company.

J. F. Finerty and H. H. Brown for Great Northern Railway Company.

F. M. Duckett for Northern Hemlock and Hardwood Manufacturers Association.

Clapp & Macartney for Northern Pine Manufacturers Association.

G. R. Hall for Commercial Club of Duluth, Minn.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

On or about March 15, 1915, the respondent carriers increased their carload rates on lumber and lumber products from St. Paul, Minneapolis, Duluth, Minnesota Transfer, and Stillwater, Minn., Ashland, Wis., and points taking the same rates, to Chicago and Chicago rate points from 10 cents to 11 cents. Rates herein are stated in cents per 100 pounds.

The respondents proposed to increase the present rate to 12 cents, by tariffs filed to become effective at various times in July and August, 1915, and which were suspended in Investigation & Suspension Docket No. 675 until May 6, 1916.

Subsequent to the filing of the proposed rate, the Northern Pine Manufacturers Association, a protestant in Investigation & Suspension Docket No. 675, filed the formal complaint in Docket No. 8142 against the present 11-cent rate, as well as the proposed 12-cent rate, alleging them both to be unreasonable and unduly discriminatory. By agreement these two cases were heard together, and they will be disposed of in one report.

The respondents urge that even the proposed rate of 12 cents is unduly low, and is compelled by actual water competition. They show that for many years rates higher than 12 cents have been carried to intermediate points; that increase of the rate as proposed is also accompanied by reductions to many intermediate points; and that deviations from the fourth section will be almost entirely removed should they be allowed to put in effect the adjustment proposed.

In September, 1914, the rate from Minneapolis to that part of Wisconsin south and west of the line of the Chicago & North Western Railway, hereinafter called the North Western, from Milwaukee to Madison, and west of the main line of the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter called the Soo, to Chicago, and to northern Illinois, was 13 cents, while the rate from the same point of origin to the region intermediate to the water competitive points north of Milwaukee varied from 10 to 13 cents, the terminal rate to Milwaukee being 10 cents. A similar situation existed with respect to Duluth, save that the rates from Duluth to points intermediate to Chicago were higher than the rates from Minneapolis to corresponding points intermediate to Chicago.

By order of November 18, 1913, the Commission authorized the Minneapolis & St. Louis Railroad to make rates between Minneapolis and Chicago less than the rates to intermediate points. On September 17, 1914, Fourth Section Order No. 4240, pursuant to applications of the Soo, the North Western, the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the Milwaukee, and

the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter referred to as the Omaha, was issued by the Commission to take effect on or before January 15, 1915. This denied the application to charge higher intermediate rates from Minneapolis and other inland points of origin, but authorized the continuance of rates from Duluth and Lake Superior ports to Lake Michigan ports less than the rates to intermediate points, with the proviso that the higher intermediate rates should not exceed a prescribed scale, under which the maximum rate for 325 miles was 10 cents, and for 460 miles, 13.8 cents. Other fourth section orders, Nos. 4239 and 4241, of September 17, 1914, authorized the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, and the Chicago Great Western Railroad, hereinafter called the Great Western, to carry rates from Minneapolis to Chicago less than the rates to intermediate points, provided the intermediate rates did not exceed a prescribed scale.

The lines reaching Chicago through Wisconsin concluded that they could eliminate nearly all deviations from the rule of the fourth section with no great loss of revenue by increasing the rate to Chicago to 11 cents, while the roads through northern Illinois, such as the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, relied on obtaining a greater degree of relief under the fourth section if the Wisconsin lines would remove their deviations from the rule of the fourth section. With this purpose in view, the respondents allege, on March 15, 1915, the 11-cent rate from Minneapolis and Duluth to Chicago was made effective.

Contemporaneously the Soo, the North Western, the Milwaukee, and the Omaha roads petitioned for a modification of the fourth section order of September 17, 1914. The Commission on April 21, 1915, denied this application in so far as the rates under consideration in this proceeding were concerned, and required, among other things, that the rate from Duluth and Minneapolis to Chicago should be applied as a maximum to intermediate points. The Rock Island, however, since it was a circuitous line, was authorized to carry rates from Minneapolis to Chicago lower than to intermediate points except as to Cedar Rapids and points north.

The adjustment of rates in conformity with fourth section orders, while maintaining the 11-cent rate from Minneapolis and Duluth to Chicago, the carriers contend, necessitates a reduction of 1 to 2 cents in the rates to the region north of the line of the Burlington, to a part of southern Wisconsin, and to a portion of eastern Illinois. Carriers like the North Western, not directly affected by the order of September 17, 1914, would, the respondents claim, have been compelled to meet the terminal rate of their competitors. Various other reductions would, it is contended, have been necessary.

For example, the lumber rates from most Minnesota points are made by adding arbitraries to the Minneapolis rate. If the old relationship between these rates and rates from points intermediate to Chicago were to be continued, it would be necessary to reduce these differential rates. Likewise, it is contended that rates on lumber from the Pacific coast would have to be reduced, though this is denied by protestants.

The carriers maintain that a substantial reduction in revenue would result from the readjustment of the intermediate rates, observing the 11-cent Chicago rate as a maximum; and that the lines operating through Illinois can not afford to turn over all their lumber traffic to Chicago to the lines reaching Chicago through Wisconsin. As a consequence it is proposed to increase the rate to 12 cents and to observe the fourth section as to intermediate stations in all instances, save upon the Rock Island.

The respondents insist, moreover, that the 12-cent rate is reasonable. They introduced in evidence many comparisons tending to show that even the proposed rate is lower than the usual and ordinary rates for comparable hauls of lumber.

Both the history and the comparative volume of the rates under attack are illustrated by the table following:

Table showing history of rates from Minneapolis and Duluth to Chicago on lumber on the Chicago, St. Paul, Minneapolis & Omaha, taken from its tariffs.

To Chicago from—	Year.	Rate.
		<i>Cents.</i>
Minneapolis.....	1896.....	14
Duluth.....	1896.....	16
Minneapolis.....	1897.....	12
Duluth.....	1897.....	14
Minneapolis.....	Apr. 1899.....	12
Duluth (water points only).....	.....do.....	10
Minneapolis.....	June 1899.....	12
Duluth.....	.....do.....	10
Minneapolis.....	1900.....	13
Duluth points.....	1900.....	15
Duluth (lake ports only).....	1900.....	15
Minneapolis.....	1902 ¹	10
Duluth and Superior points.....	1902.....	10
Minneapolis.....	1908.....	10
Duluth and Superior points.....	1908.....	12
Minneapolis.....	1909.....	10
Duluth and Superior points.....	1909.....	10
Minneapolis.....	Mar. 15, 1915.....	11
Duluth.....	.....do.....	11
Minneapolis.....	July 15, 1915 ²	12
Duluth.....	July 15, 1915.....	12

¹ Intermediate rates between 1896 and 1902 were 4 to 6 cents higher than the terminal rates. Up to 1902 the published rates were not always observed. In 1902 certain intermediate rates were made only 2 cents over the terminal rate.

² Suspended in Investigation and Suspension Docket No. 675.

The evidence shows that the 10-cent rate from Duluth, which has been generally reflected in the Minneapolis rate, was established originally to meet the competition of boat lines; that when for short periods the carriers sought to increase the 10-cent rate, they found

they were losing traffic to their water competitors and that they consequently restored it. Following is a table comparing the rates under consideration with rates in this and other regions, and the earnings thereunder:

From—	To—	Rate per 100 pounds.	Dis- tance.	Short-line distance earnings.	
				Per ton- mile.	Per car- mile. ¹
		<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Duluth (proposed).....	Chicago.....	12.0	465	0.0051	0.123
Minneapolis (proposed).....	do.....	12.0	408	.0068	.139
Duluth.....	Rockford, Ill.....	15.0	414	.0072	.173
Do.....	Freeport, Ill.....	15.0	442	.0067	.162
Do.....	Janesville, Wis.....	14.0	379	.0073	.177
Do.....	Stoughton, Wis.....	14.0	438	.0064	.154
Ashland, Wis.....	Chicago, Ill.....	12.0	423	.0056	.124
Minneapolis.....	Turney, Mo.....	18.0	469	.0076	.182
Duluth.....	Minden, Iowa.....	23.0	468	.0098	.235
Minneapolis.....	Maloy, Iowa.....	16.0	407	.0078	.187
Do.....	Blakesburg, Iowa.....	13.5	409	.0066	.158
Duluth.....	Nevada, Iowa.....	17.0	375	.0090	.216
Minneapolis.....	Freeport, Ill.....	12.0	339	.0070	.168
Do.....	Brighton, Iowa.....	12.0	337	.0071	.170
Do.....	Canton, S. Dak.....	15.0	322	.0090	.216

¹ 48,000 pounds used as an average loading.

In *Lumber Rates from the Southwest to Points North*, 29 I. C. C., 1, the Commission found to have been justified a rate of 19½ cents from Westville, Okla., to Des Moines, Iowa., a distance of 465 miles. In *Lumber Rates from Lake Charles and West Lake, La.*, 31 I. C. C., 258, it was held that the carriers justified a rate of 20 cents from Lake Charles, La., to Corpus Christi, Tex., a distance of 408 miles. Here the ton-mile revenue was 10.3 mills. In *Massie & Pierce Lumber Co. v. N. & W. Ry. Co.*, 33 I. C. C., 14, a rate of 19½ cents was approved from Long Island, Va., to Columbus, Ohio, a distance of 466 miles; and again in *Lumber from Michigan Points*, 36 I. C. C., 184, a rate of 11 cents was found justified from Cadillac, Mich., to Toledo, Ohio, for the distance of 227 miles. In this last instance the transportation conditions probably more nearly accord with those of the lumber movement under consideration in that the same general territory is involved; and therefore the rates have more value for comparative purposes.

From the preceding it appears that the proposed 12-cent rate from Minneapolis and Duluth to Chicago and Chicago rate points in every instance yields lower ton-mile revenues than the comparative rates adduced. Even the protestants admit in their brief and oral argument that the former 10-cent rate from Duluth and Minneapolis to Chicago is lower than lumber rates in other parts of the country generally for similar distances. It was testified that the 12-cent rate is lower than the Minnesota distance tariff for 400 miles.

38 I. C. C.

The intermediate rates in the territory here involved ranged by groups from 12 to 14, and in the case of a circuitous line to 16 cents. Under the adjustment proposed there will be reductions in rates to a large territory in Wisconsin and northern Illinois, while the increases are limited almost exclusively to the terminal rates between Minneapolis and Duluth on one hand and Chicago on the other. It may be remarked, however, that the bulk of the lumber movement is to Chicago rather than to intermediate territory.

The respondents contend that there are heavy terminal expenses, such as absorption of switching charges at Chicago. The North Western, for the year ending June 30, 1915, delivered 57 per cent of all its lumber traffic by connecting lines in Chicago and was compelled to absorb an average of about \$6.61 per car for the service. While this may affect the earnings of the carriers, it does not determine the reasonableness of the rate paid by the shipper.

The earnings per net ton-mile under the proposed 12-cent rate between Minneapolis and Chicago, it will be noted, for the short-line distance would be 5.8 mills, and for the average distance of all roads 5 mills; while from Duluth the rate would earn 5.1 mills per ton-mile for the short-line distance and 4 mills for average distances. The rates with which those under attack are compared vary in net ton-mile earnings from 5.6 mills to 9.8 mills.

The protestants urge commercial conditions as a reason for a denial of the proposed increases, and assert that unjust discrimination lies in the fact that rates on lumber from the southwest were not correspondingly increased at the same time. Yellow pine, they contend, fixes the price of northern pine in Chicago, and is produced at lower cost. The rate on yellow pine from the southwest to Chicago, however, is 26 cents, and considering rates alone, gives the protestants an advantage of from 10 to 16 cents. The disparity between the proposed rate of 12 cents and the existing 26-cent rate on yellow pine from the southwest is too great to admit of serious claim that undue discrimination would result if the rates on southwestern lumber are not increased. This allegation of discrimination against the northwest was dealt with in *Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co.*, 33 I. C. C., 360.

Nor do the protestants more than formally attack the reasonableness of the existing 11-cent rate. They show that Chicago is an important lumber market for them, especially for the lower grade product, though it was testified that one Minneapolis mill shipped only about 7 per cent of its output to Chicago and a Stillwater mill about 14 per cent.

That the 10-cent rate has been in force the greater part of the time since 1899 is relied upon as an additional reason to show that the 12-cent rate is unreasonable.

Some exhibits were introduced by certain protestants purporting to show the effect upon the revenues of the carriers resulting from the maintenance of the former, the present, and the proposed rates, in so far as the product of three mills of the protestants is concerned; and to show that if the 10-cent rate had been kept in effect and the fourth section orders of the Commission complied with, in so far as the shipments of these protestants were concerned there would have been a reduction in the revenues of the carriers in 1914 only to the extent of \$681; and further that if the fourth section were observed with the 11-cent terminal rate to Chicago, there would have been some increase in revenue.

Other than these computations as to the effect on the income of the respondents, which were based upon certain protestants' shipments only, there was no evidence as to the effect of the proposed increase to 12 cents and the accompanying intermediate readjustment upon the revenue of the carriers. It should be noted that while the immediate occasion for proposing the 12-cent rate was the failure to obtain anticipated relief under the fourth section, the carriers base their defense of the 12-cent rate not on the propriety of recompensing themselves for expected revenue foregone, but on the intrinsic reasonableness of the 12-cent rate *per se*.

Therefore, the essential issue is what is a reasonable rate from Duluth and Minneapolis and points taking the same rates to Chicago and Chicago rate points. In *Commercial Club of Duluth v. B. & O. R. R. Co.*, 27 I. C. C., 639, where rail-and-lake rates to Duluth from points east of the Illinois-Indiana state line were involved, at page 651 the Commission said:

We conclude, therefore, that the twin city rates are still under the influence of the rail-and-lake routes, even though that influence may be largely potential.

That the 10-cent rate from Duluth, long continued, was water compelled is beyond question, as is also the fact that any rate between Duluth and Chicago must be made with water competition in view. The comparisons adduced indicate that the proposed 12-cent rate is not above the usual rate on lumber for comparable hauls. Nor can it be maintained that because a carrier has once chosen to make a low rate to meet water competition, it is estopped from thereafter increasing that rate, provided the new rate is just, reasonable, and nondiscriminatory, and the requirements of section 4 are observed. In *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187, at page 196, it was said, quoting from *Scrap Iron Rates between Duluth, Chicago, etc.*, 28 I. C. C., 467, 470:

The extent to which the carrier shall lower its rate to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate the sole question for our determination is whether that increased rate is just

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and reasonable for the service performed, and not whether the carrier should be compelled to keep its rates on a probable unremunerative basis upon which it voluntarily put itself to meet special conditions.

It was suggested on the part of the protestants that the 12-cent rate might possibly, as it did in the past, drive traffic to the water lines, which are still operating. In *Coal and Coke Rates in the Southeast, supra*, it was said, at page 197:

The question now before us is not, however, whether the rate of \$1.25 is low enough to hold to these rail lines all the coal traffic they now have, but whether or not the proposed rates are reasonable.

The realignment of rates with a 12-cent terminal rate to Chicago as a maximum for the intermediate points will result in a general observance of the fourth section. We are of the opinion and find that the respondents have justified the proposed rate of 12 cents on lumber and lumber products from St. Paul, Minneapolis, Duluth, Minnesota Transfer, and Stillwater, Minn., and Ashland, Wis., and points taking the same rates, to Chicago and Chicago rate points.

The complaint in Docket No. 8142 will be dismissed, and an order will be entered vacating the order of suspension in Investigation and Suspension Docket No. 675.

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INVESTIGATION AND SUSPENSION DOCKET No. 665.
COTTONSEED PRODUCTS TO PORT ARTHUR, TEX.

No. 8240.

PORT ARTHUR CANAL & DOCK COMPANY
v.
ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 23, 1915. Decided March 18, 1916.

1. The Texarkana & Fort Smith Railway Company and the Kansas City Southern Railway Company published an item in a schedule naming increased rates on cottonseed cake and meal from Texas points to Port Arthur, Tex., for interstate and foreign application, to the effect that the increased rates would not apply via their lines, although for many years these carriers had been participants in the canceled rates from Texas points; *Held*, That their refusal to participate in the rates has not been justified.
2. Upon complaint that the increased rates on cottonseed cake and meal from points in the state of Texas to Port Arthur, Tex., for export are unreasonable and unjustly discriminatory; *Held*, That the defendants have failed to sustain the burden of proof by showing that the increased rates are justified.

S. W. Moore and J. M. Souby for protestants and complainant.

*F. H. Wood; Baker, Botts, Parker & Garwood; and J. H. Talli-
chet* for Galveston, Harrisburg & San Antonio Railway Company;
Houston, East & West Texas Railway Company; Houston & Shreve-
port Railroad Company; Houston & Texas Central Railroad Com-
pany; and Texas & New Orleans Railroad Company.

T. J. Norton for Gulf, Colorado & Santa Fe Railway Company.

L. M. Hogsett for International & Great Northern Railway Com-
pany.

J. F. Garvin for Missouri, Kansas & Texas Railway Company and
Missouri, Kansas & Texas Railway Company of Texas.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

By schedule effective June 24, 1915, the respondents proposed to increase by 1 cent per 100 pounds the rates on cottonseed cake and meal from Texas points to Port Arthur, Tex., for export. The Kan-

sas City Southern and Texarkana & Fort Smith railway companies caused to be published an item in the same schedule to the effect that the increased rates would not apply via their lines. Protests against the increased rates and against the item referred to were filed by the Texas Export & Import Company, the Port Arthur Board of Trade, and others. The item which proposed to make the joint rates inapplicable via the Kansas City Southern and Texarkana & Fort Smith was suspended, and now is suspended until April 22, 1916. The proposed increased rates were allowed to become effective. The Port Arthur Canal & Dock Company thereafter filed a formal complaint in which it is alleged that the rates on cottonseed cake and meal from points in the state of Texas to Port Arthur, for export, are unreasonable and unjustly discriminatory. The investigation and suspension case and the formal complaint were heard together and will be disposed of in one report.

The city of Port Arthur is situated in the southeastern part of the state of Texas about 16 miles from the Gulf of Mexico on a ship canal connected with Sabine Pass, through which ocean vessels move to and from the Gulf. It is about 20 miles south of Beaumont, Tex., which is about 83 miles east of Houston, Tex. It is reached from Beaumont by the Texarkana & Fort Smith Railway, which is owned and controlled by the Kansas City Southern Railway Company. The Texas & New Orleans Railroad, a part of the Southern Pacific system, also reaches Port Arthur from Beaumont. The rails of the Texas & New Orleans do not extend to the wharves and other port facilities at Port Arthur. Its freight designed for export, or coastwise, is delivered at West Port Arthur, where it interchanges with the Texarkana & Fort Smith.

About 3 miles from the city are located the wharves, warehouses, etc., and some 17 or 18 miles of track, which constitute the terminal facilities of the port. The storage and warehouse capacities are extensive. The docks and slips are of comparatively recent construction, and are in good condition. They provide ample ship room. Ships, to reach open water, must pass through the ship canal for a distance of about 8 miles, and out through the pass and by jetties to the outer bar of the port in the Gulf. The canal is about 80 feet wide and has been dredged to the depth of 26 feet. Vessels can not navigate the canal at night, but they may pass each other in daylight. The canal was constructed by private enterprise and turned over to the Government, no recompense therefor ever having been received by the promoters. The docks, warehouses, and facilities thereon, together with the tracks serving and connecting the same, are owned by the dock company, which is nominally the terminal carrier. The total cost of the terminal facilities, including the canal, is about \$3,000,000.

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Galveston, Tex., is situated on the Gulf of Mexico, about 50 miles southeast of Houston. It is the terminus of the International & Great Northern; Galveston, Harrisburg & San Antonio; Galveston, Houston & Henderson; Gulf, Colorado & Santa Fe; and Missouri, Kansas & Texas of Texas railways, which will hereinafter be called, collectively, the bay lines. It has extensive port facilities and a large export and import business is done at and through that port.

Texas City, Tex., is on Galveston Bay, about 8 miles from Galveston, and is served by the Texas City Terminal Company, which owns the port facilities, and operates a railroad to connect with the bay lines from 4 to 6 miles distant from the city. Port Bolivar, Tex., a port of lesser importance, is situated across the bay from Galveston.

The Port Arthur Canal & Dock Company, hereinafter called the dock company, holds title to the lands, docks, wharves, warehouses, elevators, and other facilities at Port Arthur. The wharves of the dock company are reached only by the Texarkana & Fort Smith. The dock company is owned and controlled by the Kansas City Southern Railway Company. The dock company files tariffs with this Commission naming charges for the use of its facilities, but it is not a party to tariffs of carriers naming rates to Port Arthur. It has no motive power of its own; the movement of cars from and to its facilities is performed by the Texarkana & Fort Smith.

Rates on cottonseed cake and meal in the state of Texas are made on the basis of a graduated mileage scale up to 280 miles, at which distance the rate is 17 cents per 100 pounds; for all distances in excess of 280 miles the rate is blanketed at 17½ cents. The scale of rates is applicable over a single line. For a haul involving more than one line the rates are made on the combinations of intermediate rates based on the scale, with the blanket rate of 17½ cents as maximum. Rates to the Gulf ports are made on a slightly different basis. They are made by adding fixed arbitraries to the rates to designated basing points. For example, the rates to Galveston are 2½ cents higher than those to Houston, and the rates to Port Arthur are now 3½ cents higher than the rates to Beaumont. Previous to June 24, 1915, the rates to Port Arthur were 2½ cents over the rates to Beaumont and were applicable on export and domestic traffic. This basis of rates was originally established by the Texas carriers and has been in effect for more than 30 years. It was sanctioned by the Texas state commission after its organization in 1892. The rates, based on the scale, were first made to Galveston, which at the time was the only port in Texas, and were made applicable to both domestic and export traffic. When export rates were required to be published and filed, that rate to Galveston became 1 cent higher

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by the addition of the wharfage charge at that port. In fact, the export rate includes an unloading charge and all charges for services necessary to place the cottonseed cake and meal at ship side.

Previous to June 24, 1915, rates to Port Arthur on cottonseed cake and meal had been maintained by the bay lines on the same basis as the Texas intrastate scale. The schedules, however, were filed with this Commission and were made applicable to Port Arthur for export traffic. The dock company until September 6, 1915, published a wharfage charge of 1 cent per 100 pounds, and still publishes an unloading charge on cottonseed cake and meal. During the time the charges were in effect the Texarkana & Fort Smith published an absorption of them, so that although the Texas scale of rates did not by its terms include wharfage the shipper could have cottonseed cake and meal delivered to ship side on the basis of those rates.

An exception to the general rate adjustment in effect from Texas points to Port Arthur is that from points on the St. Louis Southwestern Railway in Texas rates are now maintained on the basis of the Texas scale to Port Arthur for export, including ship-side delivery on shipments made via Texarkana, Shreveport, La., and the Kansas City Southern. At Galveston during the same time, as before stated, the bay lines made their export rates in specific terms to include ship-side delivery. The export rates to Galveston were in all cases the Texas rates plus 1 cent per 100 pounds for wharfage at that point. During this time, with the exception of a short interval, the bay lines did not absorb the wharfage charge. At Port Arthur all charges in addition to the rate to the port were absorbed by the Texarkana & Fort Smith.

The substance of the prayer of the dock company in the formal complaint here involved is that the bay lines be required to maintain to Port Arthur on cottonseed cake and meal for export no higher rates than the Texas scale, inasmuch as there is no wharfage charge in effect at Port Arthur on those commodities. In their answers the Texarkana & Fort Smith and Kansas City Southern express willingness to join in the rates asked for. It is also alleged in the complaint that Port Arthur is discriminated against in favor of Galveston and New Orleans. The discrimination in favor of New Orleans is asserted to exist because the rates from Texas producing points to New Orleans are on the Galveston basis.

So far as the investigation and suspension case is concerned, it is stated by counsel for the Kansas City Southern and Texarkana & Fort Smith that the suspended item was published to show that those carriers did not concur in the rate of 18½ cents published by the bay lines. The effect of the item, however, was to leave Port Arthur without any joint rates for export from the Texas points in connec-

tion with the bay lines, for the Texarkana & Fort Smith had to be a party to the rates in order that the traffic might reach the wharves at that point. No justification for the publication of the item was offered, and it will be ordered canceled.

We turn now to consider the reasonableness of the rate of 18½ cents to Port Arthur. Practically all cottonseed cake handled in Port Arthur is bought in Texas, and the chief competition is that with Galveston and New Orleans.

A Port Arthur exporter labors under some disadvantages in comparison with Galveston. There are no regular boat lines in operation from Port Arthur, and from 2,500 to 5,000 tons of cottonseed cake and meal must be accumulated under high interest charges to provide an average cargo. Rates to the Texas ports do not reach the maximum until a point 220 miles or more is reached from the basing point by a single line. Within the radius of 220 miles of Houston, the basing point for rates to Galveston, Texas City, and Port Bolivar, there is a much greater producing territory and many more important milling points than are to be found within the same distance of Beaumont, the basing point for rates to Port Arthur. Most of the points located within 220 miles of Beaumont are not reached from that point by direct lines. Practically no cottonseed cake and meal moves to Port Arthur on less than the maximum rate. On the other hand, Galveston rates are much less than the maximum to that port from a considerable part of the state.

The following table shows the number of pounds of cottonseed cake and meal exported from Port Arthur during the years named:

Year.	Pounds.	Year.	Pounds.
1910.....	51,641,658	1913.....	147,826,070
1911.....	78,994,957	1914.....	71,379,107
1912.....	165,150,211	1915.....	40,686,975

The following table shows the number of pounds exported from the ports of Galveston and New Orleans during the same period:

Year.	Galveston.	New Orleans.
	<i>Pounds.</i>	<i>Pounds.</i>
1910-11.....	415,512,000	279,104,355
1911-12.....	551,684,000	294,201,817
1912-13.....	419,072,000	258,859,674
1913-14.....	406,430,000	243,879,720
1914-15.....	250,098,000	369,700,335

The following is taken from an exhibit filed by complainant which gives the short-line average mileages via various routes from representative producing points in Texas to Port Arthur, the rates in

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cents per 100 pounds, the per ton-mile and per car-mile earnings on cottonseed cake and meal, based on 60,000 pounds loading:

To Port Arthur from—	Mileage.	Rate.	Yield per ton-mile.	Yield per car-mile.
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Austin.....	267	18.5	1.31	39.3
Beeville.....	285.5	18.5	1.2	37.0
Bloomiug Grove.....	281.4	17.5	1.24	37.3
Bruceville.....	281.4	18.5	1.2	37.8
Celeste.....	304	18.5	1.1	34.5
Clarksville.....	363.5	18.5	.96	29.0
Cleburne.....	326.3	18.5	1.07	32.2
Corsicana.....	265.3	18.5	1.03	39.6
Cuero.....	238.6	18.5	1.05	44.0
Dallas.....	304.4	18.5	1.15	34.5
Denison.....	344.2	18.5	1.02	30.5
Flatonla.....	216.1	18.0	1.6	47.0
Forney.....	289.9	18.5	1.25	36.3
Port Worth.....	336.5	18.5	1.04	31.2
Longview.....	224.1	18.0	1.5	45.5
Marshall.....	247.3	18.5	1.4	42.5
McKinney.....	323.6	18.5	1.08	32.4
Sherman.....	340.3	18.5	1.03	30.8
Waco.....	275.2	18.5	1.27	38.0
Waxahachie.....	296.3	18.5	1.2	36.0

This exhibit, it is contended by defendants, does not accurately disclose the rate situation because points more distant than 363 miles are not shown. If more distant points had been included it is manifest that the ton-mile and per car-mile earnings would be somewhat reduced, but the exhibit shows the yield from points naturally tributary to Port Arthur, and in territory of largest production in Texas. It is shown by complainant that rates to New Orleans, La., 298 miles east of Beaumont, are the same as to Galveston and in some cases lower than to Port Arthur.

The defendants contend that regardless of the basis for it, the rate of 18½ cents for distances over 280 miles is not unreasonable for application to any port, and if to equalize the various ports the rate includes wharfage, where wharfage is assessed, it does not follow that the rate should be 1 cent less to ports at which no wharfage charge is made. It is asserted by the defendants that the Texas rates were established at a time when Galveston was practically the only port in the state, long before the establishment of a port at Port Arthur; that Port Arthur did not become a port for export traffic until 1897 or 1898; that the rates were published with the idea that the export movement would all be made through Galveston; that the greater part of the cotton-producing territory was served by the bay lines which received 100 per cent of the rate on the traffic originated by them; and that since the establishment of the rates the conditions and circumstances have changed so that the old basis of rates is no longer a proper or reasonable one for application either to Galveston or Port Arthur.

A comparison of the cotton crop of the state of Texas for the year 1889-90 with that of 1914-15 is made by defendants. It is shown that a much larger percentage of the crop is now produced at distances over 350 miles from Galveston than was the case in 1889-90.

Oil mills have followed the growth of cotton and are now located at many points in the northern and northwestern part of the state, long distances from the ports. When the rates were established the haul could be made by one line from much of the then cotton-producing territory, and practically all of it did not require more than two lines. To reach Port Arthur in every instance it is necessary to employ the Texarkana & Fort Smith or the Kansas City Southern and connections, the St. Louis Southwestern, or the Texas & Pacific, making a two or three line division of the rate, which it is asserted was established by defendants with the idea that it was largely a one-line proposition.

It is pointed out that at Port Arthur the Texas & New Orleans is not given access to the docks. In order to reach Port Arthur with cottonseed cake and meal the Southern Pacific lines must pay the Texarkana & Fort Smith 5 cents per 100 pounds on all the traffic coming from connecting lines delivering it to the Texarkana & Fort Smith at Beaumont, except that coming through Houston, with respect to which the divisions are on a percentage basis. The Texarkana & Fort Smith does receive from the Texas & New Orleans cake and meal originating at the latter's local points, and requires as its proportion of through rates 2 cents per 100 pounds, plus \$2.50 per car for service from interchange tracks to the docks. It appears that there are only nine local points on the Texas & New Orleans where oil mills are operated. It is stated by a representative of the Southern Pacific that they are so small that they are not worthy of consideration in this connection. Shipments of cottonseed cake and meal delivered to the bay lines at Houston have a haul of about 50 miles to Galveston and the former receive $3\frac{3}{4}$ cents as their division of the rate.

The average distance to Port Arthur via Gulf, Colorado & Santa Fe routes from a large number of producing points in Texas is about 50 miles greater than the average distance via the same line to Galveston; and via short-line routes the average distance to Port Arthur is 23 miles greater than the average short-line distance to Galveston.

It is asserted by the defendants that no greater divisions out of the rate of $18\frac{1}{2}$ cents on cake and meal that moves to Port Arthur is expected by them than has been realized out of the rate of $17\frac{1}{2}$ cents. It is hoped by the bay lines that they will avoid having the cake and meal influenced to Port Arthur with a consequent shrinkage of the revenue they would otherwise realize on the haul to Galveston. It

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is stated that the bay lines are willing to put Port Arthur on an equal basis with Galveston; that they are willing to let the Port Arthur terminal line have the additional 1 cent over the Texas scale; but that they are not willing to let Port Arthur have any advantage in rates, which, the Port Arthur interests assert, is needed to influence the movement of the traffic. It is further stated that it has never been the intention of the bay lines to absorb any wharfage charge at Port Arthur; that the proposed increase is to make the maximum rate $18\frac{1}{2}$ cents to all Texas ports, that rate to include wharfage, wherever wharfage is assessed.

The bay lines' representatives testified that in their opinion the scale of rates on cottonseed cake from Texas points to the ports is unduly low, and they refer to an application by them to the state commission of Texas for permission to increase the Texas scale in certain respects, reaching a maximum of 23 cents for 350 miles and over, as additional evidence that they believe the present scale to be unduly low. It is asserted that it has been the custom of Texas carriers to equalize the ports wherever in their opinion it is reasonable to do so. The equalization with respect to cottonseed cake and meal is extended to New Orleans, 362 miles east of Houston, because the Texas & Pacific, which has its own rails to New Orleans, insists upon carrying the same rates on such traffic as it controls to New Orleans as is maintained by the bay lines to Galveston. It is asserted by defendants that the publication of lower rates to New Orleans than to Port Arthur from any point in Texas is through error. It is the intention of the Texas carriers to so frame their tariffs that there shall be no rate on cottonseed cake and meal to New Orleans from any Texas point less than $18\frac{1}{2}$ cents. Distance alone considered, the rates to New Orleans might well be higher than to Galveston or Port Arthur. There are other reasons that are equally important, such as the fact that some of the carriers have their own rails to New Orleans and do not reach Galveston or Port Arthur. Naturally the New Orleans lines prefer New Orleans and the Galveston lines prefer Galveston. For example, the Texas & Pacific has its own rails to New Orleans and insists upon carrying the same rates on cottonseed cake that it can control to New Orleans as the bay lines maintain to Galveston. Under the circumstances shown we are of the opinion that Port Arthur is not unduly discriminated against because in equalization of the ports New Orleans has no higher rates on cottonseed cake and meal. *Rates on Cotton and Cotton Linters*, 23 I. C. C., 404.

The rate of $17\frac{1}{2}$ cents to Port Arthur has been continuously in effect ever since that port was established. The intrastate rate to that port and Galveston is now, and always has been, $17\frac{1}{2}$ cents. It

is conceded that the maximum transportation rate to both Galveston and Texas City is $17\frac{1}{2}$ cents on export traffic. The contention of the bay lines is that they ought not be required to turn traffic to Port Arthur which would otherwise be hauled to Galveston. They refer to the greater distance of the haul to Port Arthur; the two or more line hauls involved; and to the divisions demanded by the Texarkana & Fort Smith on traffic moving to Port Arthur. If the bay lines are of opinion that divisions demanded by the Texarkana & Fort Smith are unreasonable, that is a question that can be properly determined only in a proceeding brought for that purpose. It is also to be noted that the defendants take no account of the fact that since the rates were established there has been an enormous increase of traffic.

It is well settled that carriers may not be required to remove, by rate adjustments, the natural disadvantages of location under which one community rests in competition with another community that is more favorably located. *Port Arthur Board of Trade v. A. & S. Ry. Co.*, 27 I. C. C., 388. It is the contention of complainant, however, that the rate of $18\frac{1}{2}$ cents to Port Arthur is higher than the same rate to Galveston, because the rate to the latter point includes ship-side delivery, and a wharfage charge of 1 cent. We think there is force in this contention. The rates now in effect to Port Arthur are what are called "domestic interstate rates." They are not export rates, and are not published to include ship-side delivery. It is true that ship-side delivery may be accomplished under the rate by virtue of there being no wharfage charge in effect at Port Arthur, and the absorption of unloading charges by the Texarkana & Fort Smith. The rate to Galveston, however, is a specific export rate, and includes a wharfage charge and ship-side delivery. The tariff naming the rates to Galveston provides in terms that the rate includes the absorption of an unloading charge of $12\frac{1}{2}$ cents per ton, and a switching charge of \$1.75 per car. The bay lines receive a transportation rate of $18\frac{1}{2}$ cents on shipments to Port Arthur, except for the divisions allowed the Texarkana & Fort Smith, or the Kansas City Southern. The avowed purpose of the bay lines is to confine the movement of cottonseed cake and meal to Galveston and other bay ports so far as they can do so by rate adjustments. In *Aransas Pass Channel & Dock Co. v. G., H. & S. A. Ry. Co.*, 27 I. C. C., 403, 414, we said that—

Defendants' contentions that any diversion of traffic from Galveston involves a corresponding loss of revenue may be true as to some of them, but even so, it does not affect their public duty in the matter. Every carrier owes a duty to the entire public, and each owes a particular duty to persons and communities which it directly serves and which are dependent upon it. *Chamber of Commerce of New York v. N. Y. O. & H. R. R. Co.*, 24 I. C. C., 53, 74. If defend-

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ants may lawfully refuse to establish through routes to Port Aransas or to put that port on a parity with Galveston simply because to do so might require them on a more or less uncertain volume of traffic to participate in a two-line haul instead of a one-line haul they might, with equal right and consistency, so adjust rates as to build up one port and close or prevent the opening of others.

We think the principle announced is applicable here. The mere fact that the ability of Port Arthur to draw some traffic because there is no wharfage charge imposed at that point is not warrant to the carriers serving Galveston to raise their line-haul rates to Port Arthur. It is frankly stated by the representatives of the bay lines that one purpose of the increase in the rates to Port Arthur is to remove the menace of a movement of cottonseed cake to that point. The bay lines insist that they have made the ship-side rate to Port Arthur the same as to Galveston. This is not substantiated by the provisions of their tariffs. The rate to Port Arthur published by the bay lines does not include a wharfage charge, and does not, so far as they are concerned, otherwise include ship-side delivery.

The terminal interests at Port Arthur have provided that there shall be no wharfage charge on cottonseed cake and meal received at that port for export. In *In re Wharfage Charges of the Galveston Wharf Co.*, 23 I. C. C., 535, the Texas City Terminal Company contended that there was no wharfage charge on cotton for export at Texas City, and that, therefore, no charge for such service should be included in the rate. In that case, at page 544, we said:

We may deal with the rates and practices of carriers for the purposes and in the manner prescribed by law; but we are not authorized to control the general policy of carriers in their competition with one another or to regulate the general management of their properties or to interfere with legitimate means adopted by them in the form of favorable rates, services, and privileges to secure the traffic of the public and the good will of shippers. When not in contravention of law these matters, generally speaking, are beyond our control. In other words, the Texas City interests are wholly within their own rights when they adopt a policy of demanding no wharf charges on traffic passing over their piers. Whether that is a wise course or not is their affair and not ours. Their experience has shown that the proximity of the harbor at Galveston, where no towing is required and other conditions are advantageous for ocean traffic, makes it necessary, in order to divert the traffic to Texas City, to offer some inducement both to the shipper and to the ocean carrier. So long as the inducement is lawful it is clear that Galveston must meet the competition or take the consequences; and free wharfage we regard as a legitimate means of making the port attractive to ocean lines.

As before stated, Port Arthur has had since 1898 a rate of 17½ cents on cottonseed cake and meal, which by the action of its terminal lines has included ship-side delivery. The record does not show that such a rate adjustment has had the effect of drawing a very large percentage of the traffic to Port Arthur. The exporter at that
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point has the right to engage in business, and to have his traffic delivered to him at reasonable and nondiscriminatory rates. Carriers may not impose upon him rates for transportation which include service for which no charges are imposed.

We do not find from this record that the burden of proof that is cast upon defendants by statute to show that the increased rates to Port Arthur are just and reasonable has been sustained. The opinion of traffic officials of the bay lines is that a rate of $17\frac{1}{2}$ cents to Port Arthur is unduly low. No material evidence to support those opinions was submitted. Cottonseed cake as shipped to Port Arthur is worth less than \$1,000 per car of 60,000 pounds. At $17\frac{1}{2}$ cents per 100 pounds the yield per ton-mile and per car-mile is comparatively high. For a 400-mile haul at that rate and loading, the yield per car-mile is $26\frac{1}{2}$ cents. On the face of it the rate is not unduly low. Port Arthur interests are here asking that they be given the advantage that should accrue to them by the fact that there is no wharfage charge on cottonseed cake and meal at that port. They ask for the maintenance of a rate for export which shall not take into account a wharfage charge that is not imposed.

It is insisted that the desire of the bay lines is to put the ports of Texas on a parity with respect to shipments of cottonseed cake and meal. Any parity of rates should be made with respect to transportation charges. If at Port Arthur no wharfage charge is imposed the Texas carriers may not rightfully name a rate to that port to include such a charge. We are of opinion, and find, that under the circumstances of record the maintenance by defendants of a rate of $18\frac{1}{2}$ cents from Texas points, which includes at Galveston and other ports a wharfage charge of 1 cent and which does not include such wharfage charge at Port Arthur, results in unjust discrimination against Port Arthur within the meaning of the act; and that so long as there shall be maintained at Port Arthur no charge for wharfage on foreign shipments the defendants shall be required to maintain and apply to the transportation of foreign shipments of cottonseed cake and meal, in carloads, from points in the state of Texas to Port Arthur rates which shall not exceed the rates to Beaumont by amounts greater than the rates contemporaneously maintained to Galveston for ship-side delivery exceed the rates to Houston.

Orders will be entered to carry into effect the conclusions here reached.

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INVESTIGATION AND SUSPENSION DOCKET No. 656. STONE FROM ILLINOIS POINTS.

Submitted January 25, 1916. Decided March 16, 1916.

Proposed increased carload rates on crushed stone and related articles from Kankakee, Lehigh, and West Kankakee, Ill., to grouped points in Illinois and Indiana found to have been justified in part only. Order of suspension vacated in so far as the more distant stations are concerned; and lower rates than those proposed found reasonable to the less distant stations.

M. J. Edgeworth and *W. R. Sanborn* for Lehigh Stone Company.

William Darroch for Newton County Stone Company.

E. S. Ballard for New York Central Railroad Company; Lake Erie & Western Railroad Company; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect June 10 and July 15, 1915, respondents proposed increased rates on crushed stone, riprap and rough stone, not dimension or dressed, on rubble, and on black dirt and quarry strippings, in straight or mixed carloads, from Kankakee, Lehigh, and West Kankakee, Ill., on the Illinois division of the New York Central Railroad, to various grouped points in Illinois and Indiana on the lines of the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called Big Four, and the Lake Erie & Western Railroad. The haul to the Illinois destinations is interstate. The schedules were protested and suspended until April 8, 1916. The rates proposed would be from 8 cents to 24½ cents per ton higher than the present rates. All of the articles named are hereinafter referred to as crushed stone, and all rates are stated in cents per net ton.

Representative rates, with ton-mile earnings, are as follows:

From Lehigh (including Kankakee and West Kankakee) to—	Distance.	Present.		Proposed.		Increase.	
		Rate per ton.	Ton-mile revenue.	Rate per ton.	Ton-mile revenue.	Rate per ton.	Ton-mile revenue.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Big Four:							
Sheldon, Ill.....	71.9	32.0	4.5	50.0	7.0	18.0	2.5
La Fayette, Ind.....	101.2	47.0	4.6	55.0	5.4	8.0	.8
Vermilion, Ill.....	151.3	40.0	2.6	60.0	3.9	20.0	1.3
Peoria, Ill.....	233.6	30.0	3.4	30.0	3.4		
Carro, Ill.....	367.6	75.0	2.0	55.0	2.3	10.0	.3
L. E. & W.:							
Ambia, Ind.....	80	32.0	4.0	56.5	7.1	24.5	3.1
Rankin, Ill.....	101	40.0	4.0	56.5	5.6	16.5	1.6
Derby, Ill.....	130	50.0	3.8	65.0	5.0	15.0	1.2
Peoria, Ill.....	202	60.0	3.0	80.0	4.0	20.0	1.0

The Lehigh Stone Company is the principal protestant. One of its witnesses testified that shortly after it began operations at Lehigh, about nine years ago, the New York Central, the Big Four, and the Lake Erie & Western established joint commodity rates on crushed stone from Lehigh to points in Indiana and Illinois to enable the Lehigh Stone Company to compete with quarries located on the Chicago & Eastern Illinois Railroad, which road maintained a rate of 32 cents on crushed stone from Thornton, Ill., to Danville, Ill., and points on its branch lines that intersect respondents' lines in Illinois and Indiana.

The present rates include increases authorized in *The Five Per Cent Case*, 32 I. C. C., 325, but respondents urge that they are too low for the service rendered and tend to depress other rates; that a number of efforts have been made in the past to increase them; and that the rates now proposed are the same as, or lower than, the rates in effect from other stone-producing points in the same territory and will not yield excessive revenues. The greater increases proposed to points nearest to Lehigh than to more distant points are due to the group rate plan followed in making rates from Lehigh.

The following table compares the rates proposed with rates published by other carriers from producing points on their lines to the grouped points of destination:

From—	80 to 104 miles.	105 to 116 miles.	120 to 148 miles.	150 to 161 miles.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Lehigh, Ill. (L. E. & W.).....	56.5	62.0	65.0	70.0
Keokuk, Ind. (Wabash).....	79.0-89.0	89.0	100.0	110.0
Lockport, Ill. (C. & A.).....		74.0	63.0	74.0

Respondents suggest that the present rates unjustly discriminate in favor of Lehigh against other competitive producing points from which shipments are made to the same destinations, and a competitor of the Lehigh Stone Company, engaged in the stone business in Indiana, states that he can not compete with that company at certain points on the line of the Big Four because of its advantage in rates. Protestants reply that the proposed rates would discriminate against Lehigh in favor of Greencastle, Ind., a competing producing point on the Big Four. But Greencastle is 93 miles nearer than Lehigh to some of the destinations. The rates from Greencastle are relatively lower than the rates proposed from Lehigh, but are local to the Big Four.

Crushed stone is a low-grade commodity, which loads well, and the respondents have failed to justify the extent of the increased rates to some of the points named in their tariffs. However, we are of opinion and find that to Templeton, Atkinson, Swanington, Fowler,

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Gravel Hill, Earl Park, and Raub, Ind., Sheldon, Iroquois, Donovan, Beaverville, St. Anne, Aroma, Ill., and to Ambia, Ind., Cheneyville, Hoopeston, East Lynn, Rankin, Clarence, Paxton, Ill., the rates should not exceed 40 cents per net ton; and to La Fayette, Ind., Perdueville, Elliott, Gibson, Derby, Saybrook, Ill., the rates should not exceed 50 cents per net ton. Rates not exceeding these the carriers respondent may file on five days' notice. Some changes in the other rates proposed may be necessary by reason of the findings herein, but the respondents will be expected to make that part of the adjustment. The proposed rates to the more distant points have been justified and the schedules with respect to such points will be allowed to become effective. An order in accordance with these findings will be entered.

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No. 7417.
OKLAHOMA TRAFFIC ASSOCIATION ET AL.
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 5, 1915. Decided March 4, 1916.

1. Rates charged for the transportation of soda ash in carloads from Hutchinson, Kans., and soda ash, caustic soda, and silicate of soda in carloads, from St. Louis, Mo., and certain points east of the Mississippi River to Oklahoma City, Okla., found unreasonable and reasonable rates prescribed for the future. Reparation awarded.
2. Defendants required to provide for the transportation of mixed carloads of soda ash and caustic soda at the highest rate and minimum applicable to either commodity.

W. V. Hardie for complainants.

A. C. Johnson for Sulzberger & Sons Company of Oklahoma.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company.

R. D. Williams for Missouri, Kansas & Texas Railway Company.

H. C. Conley for St. Louis & San Francisco Railroad Company.

P. Portel for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Oklahoma Traffic Association, is a voluntary organization of shippers and receivers of freight at Oklahoma City, Okla. Complainants, Morris & Company and Sulzberger & Sons Company of Oklahoma, are corporations operating meat packing plants at Oklahoma City. Complainant, Products Manufacturing Company, is a corporation engaged in the manufacture of soap at Oklahoma City. The complaint, filed October 22, 1914, alleges that the rates charged by defendants for the transportation of soda ash in carloads from St. Louis, Mo., Chicago, Ill., Detroit and Wyandotte, Mich., Hutchinson, Kans., and other points in the states named, and in Indiana and Ohio, to Oklahoma City are unreasonable and unjustly discriminatory and were in violation of the fourth section of the act; that the rates charged for the transportation of caustic soda in carloads from St. Louis, Mo., Chicago, Ill., Detroit and Wyandotte, Mich., Solvay, N. Y., and other points in the states named, and in Indiana and

Ohio to Oklahoma City are unreasonable and unjustly discriminatory; that the rates charged for the transportation of silicate of soda in carloads from St. Louis, Mo., Chicago, Ill., Grasselli and Fortville, Ind., and other points in the states named, and in Michigan and Ohio, to Oklahoma City are unreasonable, unjustly discriminatory, and in violation of the fourth section; and that the rates charged for the transportation of mixed carloads of soda ash and caustic soda from the above points to Oklahoma City are unreasonable. Reparation is asked.

The evidence was principally confined to the specific points of origin above named and the report will deal only with the rates from such points.

Soda ash is made from common salt, which it closely resembles. It is used as a water softener or purifier and is shipped in powder form in bags or barrels. Caustic soda is used for cleaning, purifying, removing grease, and in the refining of cottonseed oil, and is shipped in crystal form or in solid cakes in iron drums. Silicate of soda is used by packers in the treatment of wooden containers for lard and oils to prevent the absorption of grease. It is a compound of about the consistency of molasses and generally is shipped in tank cars. All three commodities are also utilized in the manufacture of soap, particularly silicate of soda. They are all low-grade commodities of low value and load heavily.

All of the points of origin involved except Hutchinson, which is one of the principal points at which soda ash is produced, are east of the Mississippi River. The rates from these points to Oklahoma City are made either by combination on St. Louis or by the addition of differentials to the rates from St. Louis. The through rates are involved, but complainants object principally to the components applicable west of St. Louis. Any change in these components would result in corresponding changes in the through rates.

During the period covered by this complaint, the period since October 22, 1912, the rate to Oklahoma City from St. Louis on caustic soda in carloads has remained stationary at $47\frac{1}{2}$ cents per 100 pounds. The rate on soda ash from St. Louis was $47\frac{1}{2}$ cents prior to September 16, 1913, and since that date has been 29 cents. Prior to October 28, 1912, the rate on soda ash from Hutchinson was $42\frac{1}{2}$ cents, but since that date has been $22\frac{1}{2}$ cents. The rate from St. Louis on silicate of soda is 40 cents. Prior to May 28, 1914, it was $47\frac{1}{2}$ cents. Complainant asks for the establishment of a rate of 17 cents on soda ash from Hutchinson to Oklahoma City, and of rates of 21 cents on soda ash and 35 cents on both caustic soda and silicate of soda from St. Louis to Oklahoma City.

Complainant compares the rate assailed on soda ash from Hutchinson with a rate of 16 cents per 100 pounds applicable from Hutchinson

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to Bartlesville, Tulsa, Muskogee, Sapulpa, and Okmulgee, Okla., in the northeastern part of the state. Oklahoma City is in the center of the state on the main lines of the Atchison, Topeka & Santa Fe Railway, the Chicago, Rock Island & Pacific Railway, the St. Louis & San Francisco Railroad, and the Missouri, Kansas & Texas Railway, all of which roads participate in the traffic involved. The tonnage over the lines named is dense in the vicinity of Oklahoma City, and we have repeatedly stated that Oklahoma City is exceedingly favorably located from a transportation standpoint. The average distance to Bartlesville and the points named is 245 miles. Oklahoma City is 231 miles from Hutchinson; Fort Worth, Tex., 436 miles from Hutchinson; Galveston, Tex., 782 miles. A rate of 24 cents applies from Hutchinson to Fort Worth; a rate of 29 cents to Galveston. Both of these rates apply to all points in the groups in which Fort Worth and Galveston are located, which comprise, roughly, the northern half of Texas and the southern portion of Texas common-point territory. A rate of 15 cents applies on salt in bulk from Hutchinson to Oklahoma City. The 22½-cent rate assailed on soda ash from Hutchinson to Oklahoma City earns 19.5 mills per ton-mile and 50.6 cents per car-mile based on actual loading, as compared with the Santa Fe system's earnings during 1914 on all traffic of 10.37 mills per ton-mile and 16.33 cents per car-mile.

Bartlesville and the other points named in northeastern Oklahoma that take a rate of 16 cents on soda ash from Hutchinson take a 17-cent rate from St. Louis on traffic from beyond for an average haul of about 450 miles from St. Louis, as compared with the rate of 29 cents charged from St. Louis to Oklahoma City for a distance of 543 miles. The rate on table salt from St. Louis to Oklahoma City is 27½ cents. The 29-cent rate on soda ash from St. Louis to Oklahoma City compares with the rates per 100 pounds from St. Louis to various other representative destinations as follows:

	Distance.	Rate.	Rate per ton-mile.
	Miles.	Cents.	Mills.
Omaha, Nebr.....	413	10	4.8
Kansas City, Mo.....	277	10	7.2
Okmulgee, Okla.....	480	17	7.2
Wichita, Kans.....	479	17	7.1
Oklahoma City, Okla.....	543	29	10.7
Fort Worth, Tex.....	720	29	8.0
Austin, Tex.....	845	34	8.0

The rate to Oklahoma City yields approximately 27 cents per car-mile, while the car-mile earnings of the four lines serving Oklahoma City average on all freight only 15.96 cents.

The 47½-cent rate assailed from St. Louis to Oklahoma City on caustic soda earns 17.5 mills per ton-mile and 45.5 cents per car-

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mile. The average earnings of the four lines serving Oklahoma City on all freight are 9.93 mills per ton-mile and 15.96 cents per car-mile. The following table compares the rates assailed with rates from Chicago and St. Louis to various representative points of destination; rates stated in cents per 100 pounds:

	Distance.	Rate.		Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
St. Louis to Oklahoma City.....	543	47.5	Chicago to Atlas, Mo.....	602	21.0
Chicago to Sioux Falls, S. Dak.....	547	15.5	St. Louis to Kansas City.....	277	10.0
St. Louis to Omaha, Nebr.....	413	10.0	Chicago to Kansas City.....	457	15.0

A rate of 43 cents applies on caustic soda from St. Louis to Wichita, Kans.; a rate of 51 cents to Texas common points. Wichita is 479 miles from St. Louis, while the distances to Texas common points average about 800 miles. But the rate to Wichita is said to be so unreasonably high that it does not afford a proper measure of the rates to Oklahoma City. A rate of 10 cents is cited from St. Louis to Kansas City and a rate of 20 cents to Topeka, Kans. Caustic soda and soda ash are rated the same in official classification territory and in western trunk line and trans-Missouri territories, and, as stated before, the rate from St. Louis to Wichita on soda ash is 17 cents.

Silicate of soda is the heaviest and cheapest of the commodities involved. The 40-cent rate assailed from St. Louis to Oklahoma City on this commodity earns 14.7 mills per ton-mile and 73.7 cents per car-mile based on a carload of 100,000 pounds and the mileage of the St. Louis & San Francisco Railroad. The total ton-mile and car-mile earnings of the roads serving Oklahoma City average 9.93 mills and 15.96 cents, respectively. Texas common points also take a rate of 40 cents from St. Louis for an average distance of about 800 miles. The same rate also applies to Wichita, but, like the rate from St. Louis to Wichita on caustic soda, it is said to be too high for the service performed to Wichita.

The following table shows rates and distances from Grasselli and Fortville, Ind., the principal points at which silicate of soda is produced, to various representative destinations; rates stated in cents per 100 pounds:

To—	From Grasselli, Ind.		From Fortville, Ind.	
	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Sioux Falls, S. Dak.....	558	15.5	719	20.4
Sioux City, Iowa.....	531	15.0	688	19.9
Atlas, Mo.....	623	21.0	592	25.9
Fort Worth, Tex.....	957	47.0	994	47.7
Oklahoma City, Okla.....	807	45.0	817	47.7

The average rate on both caustic soda and silicate of soda east of the Mississippi River for distances of 508 miles is approximately 13 cents, which earns 5.1 mills per ton-mile, about the average ton-mile earnings of the carriers operating in that territory. Complainants do not contend that they are entitled to the basis of rates applicable east of the Mississippi River or to points on the Missouri River, such as Kansas City and Omaha; but that the disparity between those rates and the rates from St. Louis to Oklahoma City, distance considered, is unreasonably great.

Oklahoma City is said to be unduly prejudiced in favor of the points in Kansas, Nebraska, South Dakota, Iowa, Missouri, and Texas above mentioned, and other points taking the same rates, where packers and soap manufacturers are located with whom complainants directly compete. Complainants admit that there are no manufacturers at the northeastern Oklahoma points mentioned with whom they compete, but in support of their allegation of unjust discrimination in favor of those points invoke the rule of the Commission that—

when the question of freight rates enters into the competition of cities or towns in any respect whatsoever, whether that competition is one for trade, factories, or people, complaints alleging unjust discrimination will be entertained by the Commission. *Transcontinental Commodity Rates*, 32 I. C. C., 449, 454.

Complainants assert that manufacturers seeking locations for their industries are kept away from Oklahoma City by the existing rate adjustment, and cite, against the present relationship of rates to Wichita, Oklahoma City, and Fort Worth, *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, and *Crowdus Bros. v. A., T. & S. F. Ry. Co.*, 32 I. C. C., 355, wherein it was held that the rates on packing-house products and hides from Oklahoma City to St. Louis should be 3 cents higher than the rates from Wichita and 5½ cents lower than the rates from Fort Worth.

Mixed carloads of soda ash and caustic soda from and to the points involved now take the less-than-carload rates on each commodity in the mixture. Complainants contend that the two articles are very much alike and that, although they generally move in straight carloads, mixed carloads sometimes are desirable and even necessary. Oklahoma City is one of the few points to which mixed carload rates on these commodities do not apply.

Defendants state that soda ash is used in large quantities by glass manufacturers, and that the rates to the northeastern Oklahoma points cited by complainant were made very low to enable glass manufacturers there to compete with glass producers in Indiana, and that the rates applicable to the Fort Worth-Dallas group of points in Texas were fixed at an unreasonably low level to encourage the location of a glass-manufacturing plant at Wichita Falls, Tex.

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Only seven cars of soda ash had moved to complainants' plants during a period of two years, and defendants argue that this movement is too light to require rates to Oklahoma City as low as to the glass-manufacturing points mentioned. Defendants cite a rate of 29 cents from St. Louis to Shreveport, La., 561 miles, Shreveport being a glass-manufacturing point. The rates cited by complainants from points east of the Mississippi River to points in South Dakota, Iowa, Nebraska, Kansas, and Missouri are said to apply under transportation conditions so different from those affecting traffic to Oklahoma City that they can not properly be compared with the rates to Oklahoma City.

All of the commodities involved are rated fifth class in the western classification and the fifth-class rate from St. Louis to Oklahoma City is 63 cents per 100 pounds. The rates on caustic soda and silicate of soda are the same from St. Louis to practically all points in the state of Oklahoma, with the exception of a few points in the northeastern part of the state, and are 5 cents higher than the rates from Kansas City. Defendants cite numerous commodities rated fifth class that take commodity rates which are the same from St. Louis to Oklahoma City as to Fort Worth. Commodity rates on other fifth-class articles entirely dissimilar to the commodities involved also are cited, which are higher than the rates assailed from St. Louis to Oklahoma City.

We find that the rate assailed on soda ash in carloads from Hutchinson, Kans., to Oklahoma City is, and for the future will be, unreasonable to the extent that it exceeds 17 cents per 100 pounds; that the rates applied to the transportation of soda ash, caustic soda, and silicate of soda in carloads from St. Louis to Oklahoma City are, and for the future will be, unreasonable to the extent that they exceed 21 cents per 100 pounds on soda ash and 35 cents per 100 pounds on caustic soda and silicate of soda, respectively, and that the through rates on the commodities involved from the specific points above named east of the Mississippi River are, and for the future will be, unreasonable to the extent that they exceed rates made by the use of locals or differentials, as the case may be, to St. Louis, plus the rates beyond, herein found reasonable; also that the assessment of charges for the transportation of mixed carloads of soda ash and caustic soda, from the points involved to Oklahoma City, higher than the charges assessable on the basis of the highest carload rate and minimum weight applicable to either commodity is, and for the future will be, unreasonable.

We further find that complainants, Morris & Company, Sulzberger & Sons Company of Oklahoma, and the Products Manufacturing Company, made certain shipments of soda ash and caustic soda from the points of origin involved to Oklahoma City and paid and bore
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charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation with interest. No reparation is due complainants on any of the shipments of silicate of soda involved, because all of these shipments were sold f. o. b. Oklahoma City. *Commercial Club of Omaha v. A. & S. R. Ry.*, 27 I. C. C., 302, 318. Reparation must also be denied on a single shipment of soda ash moved in Atchison, Topeka & Santa Fe Railway car No. 30904, for the reason that the charges assessed were paid by a shipper who is not a party to the record.

Complainants herein found entitled to reparation should prepare a statement showing as to each shipment on which reparation is claimed the point of origin, date of movement, car number and initials, route, weight, rate applied, total charges collected, rate herein found reasonable, charges at that rate, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants we will consider further issuing an order awarding reparation.

During a portion of the period involved the rates in controversy on soda ash and silicate of soda did not conform to the rules of the fourth section of the act. The rate on soda ash from Hutchinson to Oklahoma City was higher than the aggregate of intermediate rates, and the rates on both soda ash and silicate of soda from St. Louis were lower to Fort Worth than to Oklahoma City, intermediate to Fort Worth via the lines of some of the defendants. Protective fourth section applications had been filed, however, which were not set for hearing with the complaint, and the adjustment has since been rectified.

An appropriate order will be entered.

HALL, *Commissioner*, dissents.

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No. 7116.¹
PIONEER LUMBER COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted May 3, 1915. Decided February 8, 1916.

Portion of defendants' tariff provision resulting in the application of the rate applicable to the highest rated commodity in carload shipments of fir lumber, mixed with kiln-dried cedar siding, or mixed with kiln-dried cedar siding and cedar shingles, from Issaquah and Van Zandt, Wash., to South Utica, N. Y., Winner, S. Dak., and Minnesota Transfer, Minn., when the actual weight of the cedar siding is not certified to by the shipper on the shipping receipt, found to be unreasonable. Defendants required so to amend their tariff as to permit the application of the carload rate on the cedar siding at an estimated weight of 700 pounds per 1,000 feet when actual weight thereof is not obtainable, but when the amount thereof in feet is stated on the bill of lading.

Walter Metsenbaum for complainants.

H. E. Still for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are corporations engaged in the manufacture and sale of lumber and shingles, with their principal places of business in the state of Washington. By complaints, filed July 20 and 27, 1914, they allege that defendants' charges for the transportation of carloads of fir lumber, mixed with kiln-dried cedar siding, or mixed with kiln-dried cedar siding and cedar shingles, from Issaquah, Wash., and Van Zandt, Wash., to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn., on May 7, 1913, September 23, 1911, and June 6, 1913, respectively, were unreasonable to the extent that they exceeded charges based on the actual weights of the cedar at rates of 83 cents, 67 cents, and 55 cents per 100 pounds, respectively, and charges based on the weights of the fir at rates of 73 cents, 57 cents, and 45 cents, respectively. Reparation is asked. The claim based on the shipment of September, 1911, was presented to the Commission informally July 31, 1913. The record shows that the shipment alleged to have moved to Crawford, Nebr., moved to Winner, S. Dak.

¹ The proceeding also embraces complaints in—No. 7116 (Sub-No. 1), *Neukirchen Brothers v. Northern Pacific Railway Company et al.* ; and No. 7116 (Sub-No. 2), *Buckeye Lumber Company v. Northern Pacific Railway Company.*

Defendants' tariff applicable to the shipments provided that mixed carloads could be shipped at the carload rate named for each article, charges on the cedar products to be based on the actual weight certified to by shipper on the shipping receipt, except that charges on cedar shingles would be based on not less than certain minimum weights named, varying with the brand, and that fir lumber should be taken at the difference between the track-scale weight of the entire shipment and the total weight of the cedar products certified to by shipper, with the express provision that the shipping receipt or bill of lading must specify the quantity, grade, and weight of the shingles included. Complainants failed to state the weight of the cedar siding in their shipments on the bills of lading, and charges accordingly were assessed on the entire weight of the shipments at the rates applicable to the highest rated commodity in the cars.

A large number of the mills in the territory involved have no facilities for determining the actual weights of this kind of lumber, and complainants desire to use an estimated weight of 700 pounds per 1,000 feet of cedar siding whenever the actual weight can not be ascertained, stating that 700 pounds exceeds the actual weight per 1,000 feet. Cedar siding is sold guaranteed to weigh not more than 700 pounds. We are asked to require defendants to amend their tariffs so that they will provide in connection with the application of the carload rate on each commodity in mixed carload shipments an estimated weight for cedar siding of 700 pounds per 1,000 feet.

Defendants contend that if an estimated weight is established on cedar siding it will encourage requests for the use of estimated weights on cedar products generally. Those cases can be dealt with when they arise.

We find that defendants' mixing rule is unreasonable in that it results in higher charges on carload shipments of lumber with kiln-dried cedar siding, or with kiln-dried cedar siding and cedar shingles, when the actual weight of the cedar siding is not declared by the shipper, than when such actual weight is so declared. We find that a reasonable rule would permit the application of the carload rate for each article in such shipments, and provide that an estimated weight of 700 pounds per 1,000 feet for the cedar siding be used when the amount thereof in feet is stated by the shipper on the bill of lading and the actual weight of such siding is not obtainable. The record affords no basis for an award of reparation.

An appropriate order will be entered.

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No. 7640.
WEST LUMBER COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted October 4, 1915. Decided March 1, 1916.

Rates charged by defendants for the transportation of coal in carloads from Bonanza, Huntington, Hackett, and Hoffman, Ark., to Onalaska, Tex., found to have been unreasonable and unjustly discriminatory. Reparation awarded.

J. M. Simmons for complainant.

J. F. Garvin for Missouri, Kansas & Texas Railway Company of Texas and St. Louis & San Francisco Railroad Company.

J. H. Tallichet for Houston & Shreveport Railroad Company and Houston East & West Texas Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Houston, Tex., with a sawmill at Onalaska, Tex. By complaint, filed January 4, 1915, it alleges that the rate of \$3.10 per net ton charged by defendants for the transportation of certain carloads of coal since January 11, 1913, from Bonanza, Huntington, Hackett, and Hoffman, Ark., to Onalaska was and is unreasonable and unjustly discriminatory to the extent that it exceeded and exceeds \$2.60 per net ton. Reparation is asked. All rates are stated herein in dollars and cents per net ton.

All of the points of origin named are south of Fort Smith, Ark., in mine groups 7 and 14 in the so-called Oklahoma-Arkansas coal field. Bonanza and Huntington are local to the St. Louis & San Francisco Railroad in group 14. Hackett is common to the St. Louis & San Francisco and to the Midland Valley Railroad in groups 7 and 14. Hoffman is local to the Midland Valley in group 7. Onalaska is on the Missouri, Kansas & Texas Railway of Texas, 13.7 miles northwest of Livingston, Tex., and 18.5 miles southeast of Trinity, Tex. The shipments from Hoffman moved over the Midland Valley Railroad to Panama, Okla.; the shipments from the other points over the St. Louis & San Francisco Railroad to Poteau,

Okla. The route traversed beyond Panama and Poteau was: Kansas City Southern Railway and Texarkana & Fort Smith Railway to Shreveport, La.; Houston & Shreveport Railroad and Houston East & West Texas Railway to Livingston; Missouri, Kansas & Texas Railway of Texas to destination. The distances to Onalaska over the routes of movement from all the points of origin average 435 miles.

The \$3.10 rate charged applied for several years from all mines in groups 7 and 14, both by the routes of movement and by way of other routes. This rate was a joint rate. Effective November 7, 1913, the routing by way of Panama from all points in group 7 to Onalaska was canceled, leaving the \$3.10 rate applicable only by way of the Midland Valley Railroad to Muskogee, Okla., the Missouri, Kansas & Texas Railway to Mineola, Tex., the International & Great Northern Railway to Trinity, and the Missouri, Kansas & Texas Railway of Texas beyond. Effective April 25, 1915, the routing by way of Poteau was canceled from all points in group 14 to Onalaska, leaving the \$3.10 rate applicable only by way of the St. Louis & San Francisco Railroad to Denison, Tex., the Missouri, Kansas & Texas Railway to Mineola, the International & Great Northern Railway to Trinity, and the Missouri, Kansas & Texas Railway of Texas beyond. The rate legally applicable from Hoffman to Onalaska via defendants' lines after November 7, 1913, was a combination rate of \$3.15, composed of a local rate of \$2.60 to Livingston and a rate of 55 cents beyond. All of the shipments from Hoffman which moved since November 7, 1913, were undercharged.

Complainant cites in comparison the following among other rates:

To—	From group 7.		From group 14.	
	Miles.	Rate.	Miles.	Rate.
Hayward, Tex.....	384	\$2.85	354	\$2.60
Kelty, Tex.....	383	2.60	374	2.60
Diboll, Tex.....	400	2.60	389	2.60
Groveton, Tex.....	419	2.60	408	2.60
Grayburg, Tex.....	496	2.60	506	2.50
Fosteria, Tex.....	575	2.60		
Livingston, Tex.....	429	2.60		

All of these points are in the general vicinity of Onalaska. Complainant encounters competition from each of them, and states that it must shrink its profit on the products of its mill in order to stay in the field.

The \$3.10 rate was divided as follows: \$2.40 to the carriers from the points of origin to Livingston; 70 cents to the Missouri, Kansas & Texas Railway of Texas for a 13.7-mile haul to destination. The local rate for that haul is 55 cents, as mentioned above. It was stated on behalf of the Houston & Shreveport Railroad and the Houston

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East & West Texas Railway that 35 cents is the usual division for a haul of this length and that the rates to Onalaska should not be higher than the rates to Livingston, Diboll, Fostoria, and other near-by points, a basis which these carriers are willing to adopt if satisfactory divisions can be arranged with the Missouri, Kansas & Texas Railway of Texas. Thirty-five cents appears to be the division generally allowed for short hauls in this territory.

Onalaska is in Texas common-point territory and on all other classes and commodities from interstate points takes the same rates as Livingston. In *Okla. & Ark. Coal Traffic Bu. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 216-228, decided in June, 1908, we approved a rate of \$2.60 from group 7 to Livingston, 429 miles. Effective April 25, 1915, a rate of \$2.60 was also established from mines in groups 10 and 11 to Onalaska. Groups 10 and 11 are in Oklahoma on the line of the Missouri, Kansas & Texas Railway at an average distance of 385 miles from Onalaska. A rate of \$2.60 was also established on the same date from groups 7 and 14 to Trinity, Tex., by way of the Kansas City Southern Railway to Texarkana, Ark.-Tex., the Texas & Pacific Railway to Longview Junction, Tex., and the International & Great Northern Railway thence to destination, an average distance of 422 miles. But the Missouri, Kansas & Texas did not join in any of these reduced rates. Tariffs filed to take effect December 1, 1914, proposed to increase by 10 cents all rates from Oklahoma-Arkansas mines to points in Texas and other states. They were suspended in *The 1915 Western Rate Advance Case*, 35 I. C. C., 497, 603, but the order of suspension was vacated and on November 7, 1915, the 10-cent increase became effective generally. The rates from and to these points accordingly were increased to \$3.20, which rate applied, however, only by way of Muskogee and Denison in connection with the Midland Valley and St. Louis & San Francisco railways, respectively. Rates of \$2.70 now apply to Livingston and other near-by points and to Trinity in connection with the International & Great Northern Railway. Onalaska is 563 miles from Hoffman by way of Muskogee and only 450 miles by way of Panama and Shreveport. The \$3.20 rate applicable by way of Muskogee yields 5.68 mills per ton-mile. A \$2.70 rate by way of the short lines would yield 6 mills per ton-mile. Onalaska is an average distance of 490 miles from the mines in group 14 by way of Denison and only 430 miles by way of the short lines. The \$3.20 rate applicable by way of Denison yields 6.53 mills per ton-mile, while a rate of \$2.70 by way of the short lines would yield 6.27 mills.

The Missouri, Kansas & Texas Railway of Texas enjoys a haul of 299 miles from Muskogee, the Missouri, Kansas & Texas participating, and a haul of 122 miles from Denison, as compared with 38 I. C. C.

a haul of only 13.7 miles from Livingston. But since it does not originate the traffic its contention that it is entitled to the longer hauls described is without merit.

The same defendant further contends that the number of lines involved and the location of Onalaska on a branch line entitles it to charge higher rates to Onalaska than to junction points. But Onalaska is not different in this respect than Hayward, Keltys, Diboll, Groveton, and other points in the same general territory from which complainant encounters competition. The real difficulty appears to be the question of divisions, which should not be permitted to deprive complainant of reasonable and nondiscriminatory rates by way of the routes of movement.

We find that the former joint rate of \$3.10 and the former combination rate of \$3.15 were unreasonable and unjustly discriminatory to the extent that they exceeded \$2.70, and that the present combination rate of \$3.25, which has been in effect via defendants' lines since November 7, 1915, was and is, and for the future will be, unreasonable and unjustly discriminatory to the extent that it exceeded and exceeds \$2.70, which we find reasonable. We further find that complainant made shipments as described and paid and bore charges thereon at the rates herein found unreasonable; and that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at a rate of \$2.70, and that it is entitled to reparation with interest.

Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, car number and initials, weight, route, rate applied, charges collected, date of payment of charges, and the amount of reparation due under our finding herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendant we will consider the entry of an order awarding reparation. The undercharges herein found outstanding may be waived.

Certain of the shipments on which reparation is claimed moved over the Beaumont & Great Northern Railroad, which is not made a party defendant. The Missouri, Kansas & Texas Railway Company of Texas purchased the Beaumont & Great Northern before the complaint was filed and took possession on May 1, 1914, assuming all the assets and liabilities of the Beaumont & Great Northern. Under these circumstances all reparation found due upon shipments moved over the Beaumont & Great Northern prior to May 1, 1914, may be required to be made by the Missouri, Kansas & Texas Railway Company of Texas.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 713.
OCEAN-AND-RAIL RATES TO CHARLOTTE, N. C.

Submitted February 29, 1916. Decided March 14, 1916.

Proposed cancellation of ocean-and-rail class and commodity rates from eastern seaboard territory and interior eastern points to Charlotte, N. C., through the port of Charleston, S. C., found justified.

R. Walton Moore, C. J. Riwey, jr., and W. H. Fowle for respondents.

W. A. Wimbish and Wimbish & Ellis for Spartanburg Chamber of Commerce.

W. T. Creighton for Charlotte Shippers and Manufacturers Association.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By certain schedules contained in supplement No. 32 to Clyde Steamship Company's tariff, I. C. C. 92, filed to become effective September 27, 1915, respondents propose to cancel the ocean-and-rail class and commodity rates from eastern port cities, interior eastern points, and interior New England points via Charleston, S. C., to Charlotte, N. C., and those points in North Carolina and South Carolina lying between Rock Hill, S. C., and Charlotte, not including Rock Hill, and between Blacksburg, S. C., and Charlotte, not including Blacksburg. The points of destination other than Charlotte take rates slightly higher than those to Charlotte. Upon protest of the Spartanburg Chamber of Commerce of Spartanburg, S. C., these schedules were suspended to July 25, 1916. Rates are stated herein in cents per 100 pounds.

If the schedules under suspension are allowed to become effective higher combination rates will apply via this route, but joint rates from eastern seaboard territory and interior eastern points, via Norfolk, Va., and via Wilmington, N. C., to Charlotte and the other destinations, which are the same as the present joint rates via Charleston, will remain in effect. Spartanburg is not one of the destinations to which the proposed cancellation applies. The Spartanburg Chamber of Commerce is the only protestant.

This case has developed, however, as a result of our decision in *Spartanburg Chamber of Commerce v. S. Ry. Co.*, 34 I. C. C., 484, 38 I. C. C.

hereinafter referred to as the *Spartanburg Case*. We will, therefore, briefly review certain parts of that case, in order that a clear understanding may be had of the issues presented in the instant case, and of protestant's position herein.

In the *Spartanburg Case* the general adjustment of class and commodity rates to Spartanburg from eastern points, both all rail and ocean and rail; from Buffalo-Pittsburgh territory and points west thereof; and from the Virginia cities, were attacked as unreasonable and unjustly discriminatory. Because of our decisions in *Rates to North Carolina Points*, 29 I. C. C., 550, and *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the issues in the *Spartanburg Case* were narrowed to the question whether or not the rates to Spartanburg from the above defined territories were unjustly discriminatory against that point in favor of Charlotte. So far as the ocean-and-rail rates from eastern seaboard territory and interior eastern points were concerned, and these are all that need now be considered, it was complainant's contention that the rates were made and divided on the basis of the ocean haul to the ports and the rail haul to destination, and that as the distance to Spartanburg through any south Atlantic port except Wilmington, using the constructive water mileage between the respective ports, was less to Spartanburg than to Charlotte, the rates to Spartanburg should not exceed the rates to Charlotte. The accepted constructive water distance from New York, N. Y., Philadelphia, Pa., and Baltimore, Md., to Wilmington, Charleston, and Savannah, Ga., is 250 miles, and from New York to Norfolk 160 miles. On this basis, and using the short-line rail mileage from the port, the water-and-rail distance from New York via Norfolk to Charlotte and Spartanburg is 510 miles and 586 miles, respectively; from New York via Charleston to Charlotte and Spartanburg, 488 miles and 473 miles, respectively; and via Wilmington to Charlotte, 438 miles. No ocean-and-rail rates are published from eastern seaboard territory to Charlotte through any port south of Charleston. Defendants denied that ocean-and-rail rates were made with reference to the constructive mileage to the ports, and urged that the route through Norfolk controlled the rates on traffic to this territory. We found that the ocean-and-rail rates from eastern seaboard territory and interior eastern points to Spartanburg through the port of Charleston were unjustly discriminatory in so far as they exceeded those contemporaneously maintained to Charlotte, and defendants were ordered to remove the discrimination. With a view to complying with this order, they filed the schedules which are here under suspension.

While admitting that the proposed cancellation results from our order in the *Spartanburg Case*, respondents urge in justification of

their action that from eastern seaboard territory and interior eastern points to Charlotte the route through Norfolk is the rate-making route and that it fixes and controls those rates; that the lines operating through Charleston can not compete upon an equality with the lines operating through Norfolk to Charlotte; that the frequency and character of the service via Norfolk is far superior to that via Charleston; that the rates through Norfolk are made on a low basis even for that route, and that when applied via the Charleston route are unduly and unreasonably low and would never have been established and can not be maintained via the Charleston route to Charlotte under penalty of having to reduce rates to intermediate territory to the same basis; that via the Charleston route they have been unsuccessful in their efforts to induce a material movement of traffic to Charlotte; that there is no objection from any consignee at Charlotte to the withdrawal of the rates via Charleston, and that if the proposed cancellation is allowed to become effective Charlotte will continue to have the superior service via the Norfolk route; that Spartanburg has no standing in its protest against the withdrawal of these joint rates and that it should not be permitted to force the continuation of ocean-and-rail rates through Charleston to Charlotte at the price of compelling reductions in the present rates, not only to Spartanburg, but to a large territory included in the Spartanburg group.

It appears that in 1908 the Southern Railway, at the instance of its soliciting department, in connection with the Clyde Steamship Company, opened the route from eastern port cities through the port of Charleston to Charlotte. The rates were made the same as those then applicable through Norfolk to Charlotte. On April 1, 1911, the Clyde Steamship Company took over the publication of rates from the eastern territory via Charleston, to territory in the southeast, and in its tariff effective on that date no rates were published from eastern port cities or interior eastern seaboard territory via Charleston to Charlotte for the reason that experience had demonstrated that the route was not a satisfactory one, and that sufficient tonnage was not attracted to it to justify the operation of a satisfactory package car service. Subsequently, and at the request of soliciting agents, the rates to Charlotte via Charleston were reestablished, effective August 1, 1911. It is asserted that practically all the shippers at Charlotte who have received traffic through Charleston have expressed their dissatisfaction with this route, when compared with the service afforded via Norfolk.

The sailings to Norfolk from eastern port cities are more frequent than those to Charleston. It appears that from Boston, Providence, New York, Philadelphia, and Baltimore there are approximately 30 sailings per week on regular schedules to Norfolk as compared with

6 sailings to Charleston. From the standpoint of time consumed the route through Charleston to Charlotte is 56 hours longer than that via Norfolk.

It is urged that the rail service from Norfolk to Charlotte is far superior to that from Charleston. The frequent water line service to Norfolk attracts sufficient tonnage to justify the loading of package cars and through freight service from Norfolk to Charlotte by the Southern Railway, the Seaboard Air Line Railway, and the Norfolk Southern Railroad. The rates through Charleston to Charlotte apply only via the Southern Railway from Charleston and there is not sufficient tonnage via this route to warrant the operation of through package cars. To Spartanburg and points in the Spartanburg group, as well as to Augusta and Atlanta, Ga., through package cars are operated from Charleston on practically every scheduled sailing.

It appears that the volume of the tonnage moving through Charleston to Charlotte is small when compared with that through Norfolk. For the 10 months from January 1 to October 31, 1915, the total tonnage handled by the Clyde Steamship Company from the ports of New York and Boston to Charleston destined to Charlotte, on its steamers making 228 trips, amounted to 193,620 pounds. Of this tonnage more than 50 per cent consisted of cotton and bagging, the rates on which are not affected by the schedules under suspension. A witness for this company testified that this tonnage would be approximately only 1 per cent of the tonnage via the port of Philadelphia through Norfolk to Charlotte for the same period. The Southern Railway shows that for the 12 months ended October 31, 1915, it received from the Clyde Steamship Company at Charleston a total of 188,924 pounds of freight destined to Charlotte, and approximately 10,000 pounds to the other destinations involved. During this same period the Southern Railway handled to Charlotte from Pinners Point, Va., or via the Norfolk route, 500,000 to 600,000 pounds of freight per month, and it is asserted that prior to the present war conditions it handled more than 1,000,000 pounds per month. The exact volume of tonnage handled for any one period by the Seaboard Air Line or the Norfolk Southern through Norfolk, or Pinners Point, to Charlotte does not appear, but the record shows that it is substantial.

As a further justification of the proposed cancellation, respondents urge that via Charleston the rates to Charlotte, and the destinations involved herein, are lower than the rates to all intermediate points north of the first station beyond Charleston, and if the Charlotte rates were required to be maintained as maxima via this route, it would necessitate the reduction of the rates along the line from Charleston to Charlotte, a distance of approximately 231 miles

except for the 6 miles immediately north of Charleston. The ocean-and-rail rates from eastern territory via Norfolk to interior points in North Carolina and South Carolina are on a zone basis, grading up as the distances increase. They are certain differentials under the all-rail rates. This adjustment is fully explained in our report in the *Spartanburg Case*, and it is not necessary to repeat it here.

Respondents also urge that our order in the *Spartanburg Case* would have been complied with, and the Charleston route to Charlotte as effectively closed, if they had increased the Charlotte rates via Charleston to the basis of the Spartanburg rates via Charleston.

Protestant introduced no evidence at the hearing, but appeared by counsel and has filed a brief. Its position is that our finding in the *Spartanburg Case* can be construed only as meaning that the ocean-and-rail rates to Spartanburg from eastern seaboard territory should be no higher than the rates to Charlotte through any south Atlantic port.

On the date of our finding in the *Spartanburg Case* and prior to January 1, 1916, the ocean-and-rail rates on the first six classes to Charlotte and Spartanburg from eastern seaboard territory, using New York as representative, were:

Classes-----	1	2	3	4	5	6
Rates from New York to—						
Charlotte-----	91	80	67	53	46	36
Spartanburg-----	114	98	86	73	60	49

The Spartanburg rates included marine insurance, while those to Charlotte did not. The marine insurance on the respective classes amounts to 8, 6, 5, 4, 3, and 2 cents per 100 pounds.

In the *Spartanburg Case* we denied defendants' fourth section application, which sought to continue joint rates all rail from eastern territory to Spartanburg higher than the combinations on Norfolk. On January 1, 1916, these joint rates were reduced and the present rates are the same as the Norfolk combinations. Effective the same date the ocean-and-rail rates to Spartanburg from eastern seaboard territory and interior eastern points were reduced in substantially the same amounts, in order that the water-and-rail routes might maintain their recognized differential basis under the all-rail rates. No reduction was made in the rates to Charlotte and the present rates to that point are the same as those stated above. As the present joint rates from eastern territories to that point, as well as to other points in the same territory, exceed the combinations on Norfolk, it is asserted that readjustment will be made in those rates. The present ocean-and-rail rates on the first six classes to Spartanburg from eastern seaboard territory and interior eastern points are 105.6, 97.4, 79.2, 65, 52.8, 47.6. The present joint rates on the first six classes are, therefore, lower than the rates in effect at the time our order was

entered in the *Spartanburg Case*, by the following amounts: 8.4, 0.6, 6.8, 8, 7.2, 1.4.

Our findings in the *Spartanburg Case*, with reference to the ocean-and-rail rates, as appears from the report, were confined to the route through Charleston. We are concerned only in the instant case in determining whether or not respondents have justified the cancellation of these rates to Charlotte through Charleston. In *New York Dock Ry. v. B. & O. R. R. Co.*, 32 I. C. C., 568, we said:

The law does not require us to establish through routes and joint rates in all instances where carriers have neglected or refused to do so, but does empower us to do so in proper cases, with the manifest intent of giving effect to the general purposes of the act by securing reasonable facilities to the public and preventing unreasonable and unjust rates, practices, and discriminations. Where neither the interest of the public nor the ends of justice as between parties directly interested will be promoted by such establishment, a proper case for the exercise of the authority invoked has not been shown. *Loup Creek Colliery Co. v. V. Ry. Co.*, 12 I. C. C., 471-477. Each case must be tested by the needs and convenience of the community served, and the Commission will give heed to the peculiar facts of the case in the exercise of its discretionary power.

In every case in which the establishment or cancellation of a route is involved, the needs of the public or the community and the adequacy of the available facilities are questions of primary importance. If it is proposed to cancel an existing route, it is proper to consider whether or not we could have required the establishment of the route as an original proposition. *The Ogden Gateway Case*, 35 I. C. C., 131. We would not order the establishment of an additional route unless a carrier, shipper, or a community directly interested requested it. We see no reason why we should require the maintenance of such a route where carriers parties thereto desire its discontinuance and shippers directly interested do not protest, and where it appears that the community will be adequately served if the cancellation is allowed to be made effective. It clearly appears that the ocean-and-rail tonnage to Charlotte moves mainly through Norfolk; that the competition is more active via this route than via Charleston; and that the routes through Norfolk and Wilmington will adequately serve the needs of this locality for the future.

We are of the opinion, and find, that respondents have justified the cancellation of the joint rates from eastern seaboard territory and interior eastern points through the port of Charleston to Charlotte and the other destinations involved herein.

An order will be entered vacating our orders of suspension, effective May 1, 1916.

FOURTH SECTION APPLICATIONS Nos. 2045, 3965, 1952, 1548, 1065,
2138, 4219, 799, AND 2072.

CLASS AND COMMODITY RATES BETWEEN ST. LOUIS
AND EAST ST. LOUIS AND OHIO RIVER POINTS, AND
BETWEEN THE OHIO RIVER POINTS THEMSELVES.

Submitted April 8, 1915. Decided March 2, 1916.

The class and commodity rates of carriers operating both north and south of the Ohio River in the territory lying between St. Louis, Mo., and East St. Louis, Ill., on the one hand, and Ohio River points on the other, and between the various Ohio River points themselves, are in many instances in contravention of the long-and-short-haul rule of the fourth section of the act; these carriers ask to be allowed to continue these rates between the river points, which are lower than rates at intermediate points. Upon the facts disclosed by the record; *Held, That—*

1. Water competition justifies departures from the long-and-short-haul rule of the fourth section in rates between points on the Ohio and Mississippi rivers, and relief should be granted to the extent prescribed in the report.
2. Authority to continue to charge class and commodity rates between the same points via Chicago and Chicago junctions lower than rates contemporaneously applicable on like traffic to intermediate points denied.
3. Authority to continue class and commodity rates between the same points via the route of the Louisville & Nashville Railroad through Guthrie lower than rates contemporaneously applicable on like traffic to intermediate points denied.

M. Carter Hall for Louisville, Henderson & St. Louis Railway Company.

William Burger and *J. M. Dewberry* for Louisville & Nashville Railroad Company.

C. D. Drayton for Illinois Central Railroad Company; Southern Railway Company; Mobile & Ohio Railroad Company; and Cincinnati, New Orleans & Texas Pacific Railway Company.

C. B. Sudborough for Vandalia Railroad Company.

W. C. McLaughlin for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

A. G. Linneman for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and Pennsylvania Terminal Railway.

F. C. Furry and *E. A. Smith* for Illinois Central Railroad Company.

H. G. Herbel and *F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company.

Robert N. Nash for receivers of St. Louis & San Francisco Railroad Company.

C. B. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Cincinnati Northern Railroad Company.

Charles Rippin for Merchants Exchange of St. Louis, Mo.

P. W. Coyle for Business Men's League of St. Louis, Mo.

W. O. Bartholomew for Southern Illinois Millers' Association of St. Louis, Mo.

REPORT OF THE COMMISSION.

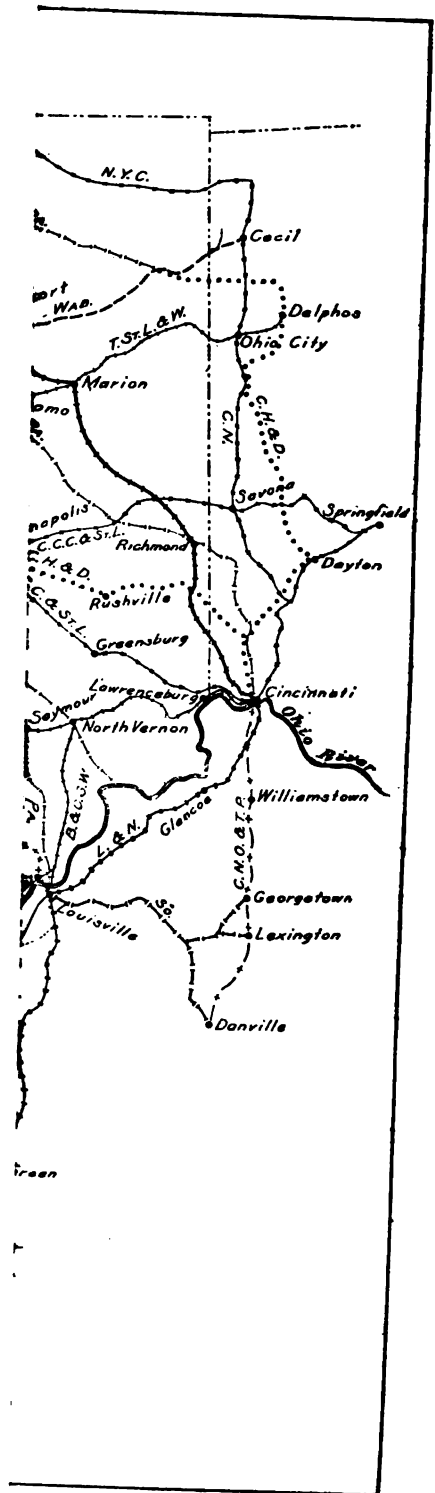
BY THE COMMISSION:

This report is based on an investigation by the Commission respecting those portions of the above-numbered applications of carriers operating both north and south of the Ohio River in the territory lying between St. Louis, Mo., and East St. Louis, Ill., on the one hand, and Ohio River points on the other, and between the various Ohio River points themselves. The applicants seek, among other things, authority to continue the present adjustment of class and commodity rates between the river points which are lower than rates contemporaneously applicable on like traffic to intermediate points.

Hearings were held on these applications at St. Louis, Mo., at which the interested carriers appeared and offered evidence in support of the relief prayed, and subsequently filed briefs to the same effect.

The railroad commissions of several states, together with the boards of trade and chambers of commerce of the cities through which the interested carriers operate, were duly notified of the hearing and invited to be present to introduce any evidence which they might desire either in support of or in opposition to the relief prayed for. No objection was interposed to the applications which are now before us for determination.

The geography of the territory involved has been productive of competitive transportation conditions peculiar to this section of the country. It is bounded on the west by the Mississippi River, which runs in a southeasterly direction from St. Louis, Mo., and East St. Louis, Ill., to Cairo, Ill., where the Ohio River, running in a southwesterly direction from Cincinnati, Ohio, through the heart of the territory involved, empties into the Mississippi. These rivers, therefore, form a navigable water route from St. Louis and East St. Louis to Cincinnati, and between all of the other intermediate Ohio and Mississippi river points. The navigability of these rivers and the water competition created by the boats operating thereon have



frequently been recognized by this Commission as the cause of lower rail rates between points on their banks than might otherwise be warranted. *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. The railways serving the different river points in seeking to meet the competition of the water carriers operating between the same points have in numerous instances departed from the long-and-short-haul rule of the fourth section, and by the above-numbered applications are now seeking relief from a strict application of the aforesaid rule.

The reasons assigned by the carriers operating the short routes between the different river points for this adjustment are as follows:

First. That the terminal points in question are located upon navigable rivers; that the tonnage of merchandise handled by water is steadily increasing; and that the all-water competition is, therefore, active and controlling.

Second. That the rates which the rail lines are obliged to apply in order to secure a reasonable proportion of the traffic between the terminal points are subnormal.

Third. That the effective rates, however, pay more than the additional cost of moving the traffic.

Fourth. That the rates from, to, and between the intermediate points are not unreasonable.

The carriers having circuitous routes between the river points, in addition to urging the fact of water competition, are asking relief in order to continue to meet the competition of the short lines between the same points.

The routes over which traffic may and does move between the different river points involved are so many and the departures from the long-and-short-haul rule of the fourth section are so numerous that it is impracticable to attempt a discussion of the rates via every route. Therefore the conditions under which the carriers are operating in this territory will be discussed in a general way and the rates shown only via the principal routes.

The situation of the railways and the many routes traversing the territory involved will best be understood by an examination of the accompanying map.

That portion of the territory involved lying immediately north of the Ohio and east of the Mississippi rivers is commonly known as central freight association territory. The lines in this territory operate both under the official classification, with certain exceptions, and the Illinois classification, while the lines south of the Ohio River operate under the southern classification, with certain exceptions.

The official classification provides six general classes as the basis for all its ratings, while the Illinois classification divides its ratings into ten classes and provides a mileage scale of rates to be specified in connection with such classification. The rates from St. Louis and group to Evansville, Ind., are governed by the official classification, whereas the rates from intermediate points to Evansville are governed by the Illinois classification.

Various difficulties encountered north of the river on account of the extraterritorial application of the Illinois classification to points in central freight association territory outside the state of Illinois are further enhanced as regards traffic originating in this territory and destined to points beyond the Ohio River governed by the southern classification. The rate adjustment under consideration, therefore, involves not only fourth section departures on the lines operating north of the river and like deviations on the lines south of the river, but also departures in a large number of interterritorial rates between points in the territory north of the river on the one hand and points in the territory south of the river on the other hand. The rates between these territories for a long period have been made and divided on the Ohio River, and the rates, or factors, in those combinations are, therefore, governed by one set of classifications north of the river, while the rates south of the river are governed by another classification.

We shall deal first with the lines operating north of the Ohio River. The rates via the direct lines of some of the carriers in this territory do not contravene the provisions of the fourth section, while the rates of other direct routes do, and these latter carriers are therefore asking relief from the operation of the fourth section to continue their present adjustment.

Some of the principal routes between St. Louis and Cincinnati are: The Baltimore & Ohio Southwestern Railroad, distance 339 miles; the Cleveland, Cincinnati, Chicago & St. Louis Railway, distance 363 miles; and the Pennsylvania lines, distance 384 miles.

There are no fourth section departures in the rates between St. Louis and Cincinnati via the above-mentioned routes, but these carriers are asking relief between other river points where they have the circuitous route, their rates to the intermediate points being constructed upon the central freight association mileage scale.

The other principal routes between St. Louis and Cincinnati are: The Louisville & Nashville Railroad, in connection with the Louisville, Henderson & St. Louis Railway, distance 429 miles; the Southern Railway to Louisville and the Louisville & Nashville

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Railroad, Louisville to Cincinnati, distance 388 miles; and the Southern Railway to Georgetown, Ky., in connection with the Cincinnati, New Orleans & Texas Pacific Railway, Georgetown to Cincinnati, distance 435 miles.

The principal routes between St. Louis and Louisville are: The Southern Railway, distance 274 miles; the Baltimore & Ohio Southwestern Railroad, distance 325 miles; the Louisville & Nashville Railroad, in connection with the Louisville, Henderson & St. Louis Railway, between Henderson and Louisville, distance 319 miles; the Louisville & Nashville Railroad between Henderson and Ellmitch, Ky., and the Louisville, Henderson & St. Louis Railway between Ellmitch and Louisville, distance 342 miles; and the Louisville & Nashville Railroad, via Guthrie, distance 436 miles.

There are no fourth section departures in the class rates between St. Louis and Louisville, via the Southern Railway and the Baltimore & Ohio Southwestern.

The principal routes between St. Louis and Evansville, Ind., are: The Louisville & Nashville Railroad, distance 167 miles; and the Southern Railway, distance 247 miles.

The principal routes between St. Louis and Paducah are: The Louisville & Nashville Railroad, distance 175 miles; and the Illinois Central Railroad, distance 171 miles.

The principal routes between St. Louis and Cairo are: The Illinois Central Railroad, distance 148 miles; the St. Louis, Iron Mountain & Southern Railway, distance 150 miles; and the Mobile & Ohio Railroad, distance 152 miles.

There are a great many other workable routes between all of these points which it is unnecessary to state here. The lines above named also in most instances operate between the various Ohio River crossings themselves.

The conditions under which certain of the direct routes operate in the territory north of the river is peculiar in that, as before stated, the rates between the river crossings are governed by the official classification, whereas the rates at certain intermediate points are governed by the Illinois classification. In other cases the Illinois Railroad and Warehouse Commission has constituted certain carriers operating in that state class B roads, the practical effect of which is to permit these carriers to charge 10 per cent more between points in Illinois than would be permitted to be charged were they classified as class A roads. This distinction is made according to the evidence because the class B roads operate through what is commonly understood to be the section of the state affording least traffic.

As illustrative of the foregoing the rates of the Louisville & Nashville Railroad, the direct line from St. Louis, Mo., to Evansville, Ind., are governed by official classification between the river points and a few points in Indiana, while the rates to intermediate points on this line in Illinois are governed by the Illinois classification. The Illinois rate scale and classification, therefore, has application from East St. Louis, Ill., to all stations on the line of the Louisville & Nashville in Illinois, comprising all but eight stations between that point and Evansville, Ind., or to within about 35 miles of Evansville. On the East St. Louis end of this piece of road it is only necessary to add the bridge toll across the Mississippi River to extend to St. Louis, Mo., the Illinois scale and classification. St. Louis and East St. Louis are important jobbing and distributing points on the Mississippi River, while Evansville is a similarly situated market on the Ohio River. Both are reached by navigable waterways; manifestly both are entitled to compete on a parity at intermediate stations; and recognizing this condition, the Louisville & Nashville Railroad Company, it is stated, has found it expedient to extend the same Illinois schedule and classification to both ends of this division in order to grant equal opportunity to both places.

There are included in this section of road, as shown above, some eight stations in the state of Indiana located on about 35 miles of the road nearest Evansville. It is alleged that when it came to the attention of the Indiana Railroad Commission that the Illinois commission scale and classification was employed, as between these stations in Indiana, the Indiana Railroad Commission, in 1910, ordered the discontinuance thereof and directed the carrier to observe the official classification thereafter. This order was complied with by cancellation of the first six classes and by using for these six classes the official classification on intrastate business in Indiana.

The following table is illustrative of the rates and distances via the Louisville & Nashville Railroad, a class B road, from St. Louis and East St. Louis to Evansville, Ind. In this table and elsewhere in this report rates are stated in cents per 100 pounds.

Statement showing class rates¹ and distances from St. Louis, Mo., and intermediate points to Evansville, Ind.

To Evansville, Ind., via L. & N. R. R., from—	Miles.	1	2	3	4	5	6	7	8	9	10	Classi- fication.
Bellknep, Ind.	7	15.8	13.7	11.6	8.4	7.4	6.3	.....	.....	.....	.....	B
St. Philip, Ind.	9	15.8	13.7	11.6	8.4	7.4	6.3	.....	.....	.....	.....	B
Lippe Crossing, Ind.	11	17.9	15.8	13.7	9.5	8.4	7.4	.....	.....	.....	.....	B
Osborn, Ind.	13	17.9	15.8	13.7	9.5	8.4	7.4	.....	.....	.....	.....	B
Lamott, Ind.	16	20.0	17.9	14.7	10.5	8.4	7.4	.....	.....	.....	.....	B
Mount Vernon, Ind.	20	12.6	10.5	9.5	7.4	6.3	4.2	.....	.....	.....	.....	B

¹ Tariff authorities: L. & N. R. R. Evansville local I. C. C. No. A-12766; L. & N. R. R. G. F. O. 2264, I. C. C. No. A-13223; Wm. Cameron's tariff No. 400-B, I. C. C. No. D-80.

² Classification governing: A, governed by L. & N. R. R., Illinois classification I. C. C. No. A-8264; B, governed by official classification I. C. C. O. C. No. 42. (Dewberry Exhibit No. 1.)

Statement showing class rates and distances from St. Louis, Mo., and intermediate points to Evansville, Ind.—Continued.

To Evansville, Ind., via L. & N. R. R., from—	Miles.	1	2	3	4	5	6	7	8	9	10	Classification.
Upton, Ind.	24	22.1	20.0	18.8	11.6	9.5	8.4	.....	.....	.....	.....	B
Welborn, Ind.	27	24.2	21.0	18.8	12.6	10.5	8.4	.....	.....	.....	.....	B
Maunie, Ill.	31	23.7	20.7	18.8	12.6	10.1	8.4	7.9	6.3	4.9	4.4	A
Epworth, Ill.	35	25.7	21.7	17.9	13.3	10.7	8.9	8.1	6.6	5.1	4.6	A
Carmi, Ill.	38	27.6	22.7	18.8	13.8	11.0	9.4	8.9	6.9	5.3	4.8	A
Trumbull, Ill.	43	29.6	23.7	19.7	14.3	11.4	9.9	9.4	7.1	5.5	5.0	A
Enfield, Ill.	48	30.6	24.7	20.7	14.8	11.8	10.1	9.9	7.3	5.7	5.2	A
Enfield Junction, Ill.	49	30.1	24.7	20.7	14.8	11.8	10.1	9.9	7.3	5.7	5.2	A
Thackeray, Ill.	55	31.2	25.7	21.7	15.3	12.2	10.8	10.1	7.5	5.9	5.3	A
McLeansboro, Ill.	61	33.6	27.6	23.7	16.3	13.0	11.4	10.6	7.0	6.3	5.7	A
Deafield, Ill.	66	34.5	28.5	24.2	16.8	13.4	11.6	10.9	8.1	6.5	5.8	A
Dahlgren, Ill.	71	35.5	29.6	24.7	17.3	13.8	11.8	11.1	8.3	6.6	6.0	A
Belle Rive, Ill.	75	35.5	29.6	24.7	17.3	13.8	11.8	11.1	8.3	6.6	6.0	A
Opdyke, Ill.	79	35.5	30.6	25.0	17.8	14.2	12.1	11.3	8.5	6.8	6.1	A
Mount Vernon, Ill.	86	36.8	33.1	25.2	16.8	14.7	11.6	.....	.....	.....	.....	B
Drivers, Ill.	91	38.5	31.6	25.6	18.8	15.0	12.6	11.6	8.9	7.1	6.4	A
Woodlawn, Ill.	93	39.5	32.1	25.9	19.2	15.4	12.8	11.8	9.1	7.3	6.5	A
Rosch's, Ill.	93	39.5	32.1	25.9	19.2	15.4	12.8	11.8	9.1	7.3	6.5	A
Ashley, Ill.	96	40.5	32.6	26.1	19.7	15.8	13.1	12.0	9.3	7.4	6.7	A
Ashley, Ill.	102	41.5	33.1	26.4	20.0	16.1	13.3	12.2	9.5	7.5	6.8	A
Beaucoup, Ill.	108	42.4	33.6	26.7	20.5	16.4	13.6	12.4	9.7	7.7	6.0	A
Nashville, Ill.	113	43.4	34.1	27.0	20.9	16.7	13.8	12.6	9.9	7.9	7.1	A
Addieville, Ill.	119	44.4	34.5	27.3	21.3	17.1	14.0	12.8	10.0	8.0	7.2	A
Okawville, Ill.	123	44.9	35.0	27.6	21.7	17.4	14.2	13.0	10.3	8.2	7.4	A
Venedy, Ill.	127	45.4	35.5	27.9	22.1	17.7	14.4	13.2	10.5	8.3	7.5	A
Queen's Lake, Ill.	130	45.4	35.5	27.9	22.1	17.7	14.4	13.2	10.5	8.3	7.5	A
New Memphis, Ill.	131	45.4	35.5	27.9	22.1	17.7	14.4	13.2	10.5	8.3	7.5	A
Mascoutah, Ill.	138	46.4	36.5	28.5	22.9	18.3	14.8	13.5	10.9	8.6	7.8	A
Rentzhlers, Ill.	142	46.9	37.0	28.8	23.3	18.6	15.0	13.7	11.0	8.8	7.9	A
Belleville, Ill.	148	37.3	32.0	26.3	17.3	13.7	10.5	.....	.....	.....	.....	B
Summit, Ill.	151	47.4	37.5	29.1	23.7	18.9	15.2	13.8	11.2	8.9	8.0	A
Birkners, Ill.	153	47.9	37.9	29.4	23.9	19.1	15.2	13.9	11.3	9.0	8.1	A
French Village, Ill.	155	47.9	37.9	29.4	23.9	19.1	15.2	13.9	11.3	9.0	8.1	A
East St. Louis, Ill.	162	37.3	32.0	26.3	17.3	13.7	10.5	.....	.....	.....	.....	B
St. Louis, Mo.	167	37.3	32.6	26.3	17.3	13.7	10.5	.....	.....	.....	.....	B

*Two sets of rates apply from Mount Vernon to Evansville, Ind., one covered by Illinois classification and one by official classification. The lowest rate governs in each instance.

It will be observed that two lines of rates, one governed by the official classification and the other by the Illinois classification, obtain at Mount Vernon, Ill., which is a junction point of the Southern Railway and the Chicago & Eastern Illinois Railroad. The tariff carries by reference a note to the effect that whichever rate is the lower is the legal and correct rate applicable. It is asserted that it has been found necessary to carry these dual rates in order to meet competitive conditions existing at Mount Vernon. For instance, from East St. Louis to Mount Vernon is entirely intrastate, and the lines operating in the state of Illinois must necessarily conform to the Illinois classification and rules. Certain of the rates to and from Mount Vernon being interstate are, therefore, governed by the official classification, and in order to keep these rates in line with the rates of their competitors it is necessary for the Louisville & Nashville to carry two lines of rates, with the provision that whichever classification makes the lower rate will prevail.

Rates in the opposite direction are generally on the same basis, as are also rates to Henderson, Owensboro, Louisville, and the other river crossings reached by this carrier directly or by its connections.

These rates appear to be constructed upon the proper basis, and there is no complaint on file against the reasonableness *per se* of the rates to the intermediate points. Therefore rates to the intermediate points being constructed in accordance with the mileage scale prescribed by the state, it may be presumed in the absence of any showing to the contrary that the rates so made are reasonable and that the intermediate points are not unduly discriminated against if the carriers are permitted to continue to charge to the river points lower rates which have been induced by water competition.

The record shows that boat lines are operating between St. Louis-East St. Louis and Ohio River crossings, and that the traffic moving by water is important in amount. It is shown by the evidence that the waterways throughout the territory involved afford not only potential competition, but actual competition.

The Lee line operates two boats weekly between St. Louis and Memphis which stop at Cairo, Ill., and Paducah, Ky.

The Tennessee River Packet Company operates a boat once a week between the same points.

The People's Packet Company operates one boat a week between St. Louis and Memphis, calling at Cairo in both directions. All of these boats land at a wharf which is near all the wholesale houses and handle considerable tonnage between St. Louis and Cairo.

The Lee line also operates steamers from Cincinnati to Memphis, stopping at Louisville, Owensboro, Evansville, and other Ohio River points.

The Cincinnati Packet Company operates six boats in daily service each way between Cincinnati and Louisville, stopping at way landings.

The Louisville & Evansville Transportation Company operates two boats between Louisville and Evansville, making four round trips each week and stopping at way landings.

Capt. R. N. Smith operates one steamer, one gasoline boat, and three barges on irregular schedule between Louisville and Tell City, Ind., a point on the Ohio River just opposite Hawesville, Ky., and midway between Owensboro and Westpoint. This gives additional water competition between Louisville and Westpoint and the interior.

The Evansville & Paducah Packet Company operates two boats in daily service between Paducah and Evansville.

The Paducah & Cairo Packet Company operates a boat making a round trip each day between Paducah and Cairo.

The boat line rates are not ordinarily published for information of the public and are difficult of ascertainment, nor is it possible, it was claimed, to show the amount of tonnage moving via the river. The Louisville & Nashville in one or two instances was able to procure tariffs of boat lines between different river points, and in every

instance the rates between the river points are shown to be lower than the rail rates between the same points, as will be shown by the following comparisons:

FROM ST. LOUIS, MO., TO MOUND CITY, ILL., METROPOLIS, ILL., PADUCAH, KY., AND CAIRO, ILL.

	1	2	3	4	5	6
River rates.....	25.0	20.0	15.0	12.5	10.0	.....
Rail rates:						
Mound City, Ill.....	37.5	29.6	23.1	18.6	14.9	14.1
Metropolis, Ill.....	38.3	30.3	23.5	19.1	15.3	14.5
Paducah, Ky.....	36.0	30.0	25.0	19.0	15.0	12.5
Cairo, Ill.....	37.9	30.0	23.3	19.0	15.1	14.3

FROM LOUISVILLE, KY., TO ST. LOUIS, MO.

River rates ¹	30.0	27.0	20.0	15.0	12.0	11.0
Rail rates.....	43.1	36.2	26.8	18.4	15.8	12.6

BETWEEN LOUISVILLE, KY., AND CINCINNATI, OHIO.

River rates No. 1 ²	25.0	22.0	17.0	12.0	9.0	8.0
River rates No. 2 ³	20.0	17.0	13.0	10.0	7.2	7.2
Rail rates.....	26.3	23.1	17.9	12.6	9.5	8.4

BETWEEN CINCINNATI, OHIO, AND OWENSBORO, KY.

River rates No. 1 ⁴	32.0	27.0	22.0	15.0	12.0	10.0
River rates No. 2 ⁵	30.0	25.0	20.0	14.0	12.0	10.0
Rail rates.....	42.0	35.7	26.3	17.9	15.8	12.6

BETWEEN CINCINNATI, OHIO, AND EVANSVILLE, IND.

River rates No. 1 ⁴	32.0	27.0	22.0	15.0	12.0	10.0
River rates No. 2 ⁵	30.0	25.0	20.0	14.0	12.0	10.0
Rail rates.....	42.0	35.7	26.3	17.9	15.8	12.6

BETWEEN CINCINNATI, OHIO, AND HENDERSON, KY.

River rates No. 1 ⁴	35.0	32.0	24.0	16.0	14.0	12.0
River rates No. 2 ⁵	30.0	25.0	20.0	14.0	12.0	10.0
Rail rates.....	42.0	35.7	26.3	17.9	15.8	12.6

BETWEEN CINCINNATI, OHIO, AND PADUCAH, KY.

River rates No. 1 ⁴	35.0	32.0	24.0	16.0	14.0	12.0
River rates No. 2 ⁵	32.0	25.0	22.0	16.0	14.0	12.0
Rail rates.....	43.0	37.0	32.0	25.0	20.0	18.0

¹ Lee line tariff G. F. O. No. 71-A.

² River rates No. 1.—Manuscript copy of rates furnished in January, 1915, by C. C. Fuller, superintendent Louisville & Cincinnati Packet Co., as in effect Aug. 1, 1913. Also letter dated Feb. 14, 1912, written by W. E. Quiggin, G. F. & P. A., Louisville & Cincinnati Packet Co.

³ River rates No. 2.—Rates of Cincinnati & Memphis Packet Co. steamer *Omo*, secured at Cincinnati, Apr. 1, 1915.

⁴ River rates No. 1.—Louisville & Evansville Transportation Co. and Louisville & Cincinnati Packet Co.'s joint freight tariff No. 3, effective Mar. 15, 1913.

⁵ River rates No. 2.—Rates of Cincinnati & Memphis Packet Co. steamer *Omo*, secured at Cincinnati, Ohio, Apr. 1, 1915.

FROM CINCINNATI, OHIO, TO CAIRO, ILL.

	1	2	3	4	5	6
River rates No. 1 ¹	38.0	33.0	24.0	17.0	14.0	12.0
River rates No. 2 ²	33.0	28.0	21.0	15.0	13.0	11.0
Rail rates.....	46.2	39.4	29.9	20.6	17.9	14.7

¹ River rates No. 1.—Louisville & Evansville Transportation Co. and Louisville & Cincinnati Packet Co.'s joint freight tariff No. 3, effective Mar. 15, 1913.

² River rates No. 2.—Rates of Cincinnati & Memphis Packet Co. steamer *Ohio*, secured at Cincinnati, Ohio, Apr. 1, 1915.

FROM CINCINNATI, OHIO, TO MEMPHIS, TENN.

	1	2	3	4	5	6	A
River rates ¹	60.0	50.0	45.0	35.0	30.0	25.0	20.0
Rail rates.....	75.0	60.0	55.0	40.0	35.0	30.0	20.0

¹ Rates of Cincinnati & Memphis Packet Co. steamer *Ohio*, secured at Cincinnati, Apr. 1, 1915.

BETWEEN LOUISVILLE, KY., AND OWENSBORO, KY.

	1	2	3	4	5	6
River rates No. 1 ¹	26.0	22.0	18.0	12.0	10.0	8.0
River rates No. 2 ²	23.0	20.0	17.0	12.0	10.0	8.0
Rail rates.....	33.1	28.4	22.6	14.7	12.6	10.5

BETWEEN LOUISVILLE, KY., AND EVANSVILLE, IND.

	1	2	3	4	5	6
River rates No. 1 ¹	26.0	22.0	18.0	12.0	10.0	8.0
River rates No. 2 ²	20.0	17.0	15.0	10.0	9.0	7.5
Rail rates.....	33.1	28.4	22.6	14.7	12.6	10.5

FROM LOUISVILLE, KY., TO HENDERSON, KY.

	1	2	3	4	5	6
River rates ⁴	23.0	20.0	17.0	12.0	10.0	8.5
Rail rates.....	33.1	28.4	22.6	14.7	12.6	10.0

FROM LOUISVILLE, KY., TO PADUCAH, KY.

	1	2	3	4	5	6
River rates ⁴	27.0	22.0	20.0	15.0	12.0	10.0
Rail rates.....	35.0	29.0	25.0	19.0	15.0	12.0

FROM LOUISVILLE, KY., TO CAIRO, ILL.

	1	2	3	4	5	6
River rates ⁴	30.0	25.0	20.0	14.0	12.0	10.0
Rail rates.....	45.2	39.4	29.9	20.5	17.9	14.7

¹ River rates No. 1.—Louisville & Evansville Transportation Co.'s local freight tariff No. 2, effective June 25, 1913.

² River rates No. 2.—Lee line tariff G. F. O. 90-A. Rates apply from Louisville to Owensboro.

³ River rates No. 3.—Lee line tariff G. F. O. 97-A. Rates apply from Louisville to Evansville.

⁴ Lee line tariff G. F. O. 90-A.

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FROM LOUISVILLE, KY., TO MEMPHIS, TENN.

	1	2	3	4	5	6	A	B	C	D	E	H	F
River rates ¹	50.0	37.5	33.0	27.0	22.5	19.0	12.0	11.0	11.0	10.0	16.0	28.0	22.5
Rail rates.....	65.0	50.0	45.0	35.0	30.0	25.0	15.0	26.0	15.0	12.0	20.0	42.0	30.0

¹ Lee line tariff G. F. O. 100-A.

BETWEEN NEW ALBANY, IND., AND OWENSBORO, KY.

	1	2	3	4	5	6
River rates ¹	26.0	22.0	18.0	12.0	10.0	8.0
Rail rates.....	38.3	33.6	26.8	18.9	15.8	13.7

BETWEEN EVANSVILLE, IND., AND OWENSBORO, KY.

	1	2	3	4	5	6
River rates ²	18.0	15.0	13.0	10.0	9.0	8.0
Rail rates.....	28.0	20.0	18.0	16.0	14.0	13.0

BETWEEN NEW ALBANY, IND., AND EVANSVILLE, IND.³

	1	2	3	4	5	6
River rates ¹	26.0	22.0	18.0	12.0	10.0	8.0
Rail (interstate).....	33.1	28.4	22.6	14.7	12.6	10.5
Rail rates (intrastate).....	31.5	27.0	21.5	14.0	12.0	10.0

¹ Louisville & Evansville Transportation Co.'s local freight tariff No. 2, effective June 25, 1913.² Louisville & Nashville Transportation Co.'s local freight tariff No. 2, effective June 25, 1913.³ The river rates on this route are published by the St. Louis & Tennessee Packet Co. in tariff No. 21, and en route from St. Louis their boats must pass Cairo, Ill.

There can be no doubt from the evidence that the water competition on both the Ohio and the Mississippi rivers is active and controlling and that the rail rates between the water points have been set at a lower level than they might reasonably be were it not for the effect of this water competition. It is our opinion, and we so find, that the situation presented by the Louisville & Nashville Railroad constitutes a special case which, under the law, warrants relief.

The Southern Railway, likewise a class B road in Illinois, operates between St. Louis and Louisville as a main line, with branch lines running from Huntingburg to Evansville, Rockport, and Cannelton, Ind. These lines traverse a coal-mining and agricultural section in the southern portion of the state of Illinois; they also pass through the lower hills of the state of Indiana, a coal-mining and cattle-raising section, with some little lumber. The Evansville, Rockport, and Cannelton branches all lie in a hilly district producing very little traffic other than coal and clay products. The record shows that because of the comparatively light volume of traffic originating in the territory through which these lines operate both the Illinois and the Indiana railroad commissions have seen proper to accord to the St. Louis-Louisville lines of the Southern Railway a higher scale

of rates than is accorded to certain other lines operating in those states.

Between St. Louis and East St. Louis and Evansville, Ind., the Southern Railway's mileage is 148 per cent of the short-line mileage of the Louisville & Nashville Railroad. The maximum departures from the requirement of the fourth section occur at Booneville, Ind., where the first-class rate is 43.1 as against 37.3 to Evansville. This point is east of Evansville geographically, but is intermediate thereto via the route of the Southern Railway from St. Louis to Evansville. The Southern Railway also has a route from St. Louis to Evansville via Mount Carmel and the Big Four Railroad, over which there are no fourth section departures in reaching Evansville. It is claimed that should fourth section relief be refused via its circuitous route the Southern Railway would thereby be deprived of the opportunity of using its own rails to Evansville and would be forced to confine the movements of traffic originated by it at St. Louis and East St. Louis to the short route to Evansville in connection with the Big Four. Furthermore, it is alleged that this service would afford only Big Four delivery at Evansville instead of Southern Railway delivery, and that the absorption of a switching charge at Evansville would often be necessary in order to make delivery to the Southern Railway industries, thus further reducing the Southern Railway's revenue. Naturally, the Southern Railway desires to use its own route and to secure to itself and its patrons deliveries at its own terminals at Evansville. Inasmuch as the rates to Booneville, when considered alone, do not appear unreasonable *per se*, and this point could not be said to be unduly discriminated against if the Southern Railway were granted relief via its circuitous route through Booneville to meet the water competitive rate established at Evansville, we are of the opinion, and so find, that this is a proper case for fourth section relief.

The St. Louis, Iron Mountain & Southern Railway is operated between St. Louis and East St. Louis on the north and Cairo, Ill., on the south. The St. Louis-Cairo rates are the same as the East St. Louis-Cairo rates, with the same fourth section departures at intermediate points. The East St. Louis-Cairo rates are intrastate rates, and the water competition between these points is recognized by the state commission as a reason for permitting the charging of higher rates at intermediate points between the terminals. This situation is urged as affording ground for relief by continuing the higher rates at intermediate points between St. Louis on the north and Cairo on the south. It is shown that this carrier was originally designated as a class B road in Illinois, and for that reason allowed an increase of 10 per cent on classes 1 to 5, inclusive, and 5 per cent on classes 5 to

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10, inclusive, including commodities, over and above the scale of rates of the so-called class A roads. Subsequently, however, it is represented that this carrier was placed in the class A group, which had the effect of automatically reducing the rates from and to East St. Louis 10 and 5 per cent, respectively, and, as the St. Louis rates are made the same as the East St. Louis rates, it had the effect of reducing, likewise, the interstate rates to and from East St. Louis. In view of these circumstances it is fair to assume that this adjustment is proper and that this Commission may, in the absence of any showing to the contrary, recognize these rates granted by the state commission as a proper case in which relief should be granted from the operation of the fourth section on interstate traffic between St. Louis and Cairo. The disparity shown between the rates to Cairo and to intermediate points does not appear to be great. We are of the opinion that under the circumstances the discrimination against intermediate points is not undue, and we shall authorize this carrier to continue the rates to Cairo and the present higher rates to intermediate points.

The Illinois Central Railroad Company operates both north and south of the Ohio River, between St. Louis and East St. Louis and the following river crossings: Cairo, Ill., Paducah, Ky., Evansville, Ind., Henderson, Ky., Owensboro, Ky., Louisville, Ky., and also between Cairo and Louisville and Evansville and Louisville.

The rates between St. Louis, East St. Louis, and all of the other river crossings are in most instances lower than at intermediate points. The Illinois Central is the direct line between East St. Louis and Paducah, with a mileage of 162 miles. It is also the direct line between East St. Louis and Cairo, with a mileage of 149 miles; between St. Louis and the other Ohio River points it has the longer line.

The rates from East St. Louis to Paducah are governed by the southern classification, while the rates to and from intermediate points are governed by the Illinois classification. The first-class rate between St. Louis and Paducah, southern classification, is 36 cents for the distance of 165 miles. The maximum deviation from the rule of the fourth section is at Brookport, Ill., 162 miles, which under the Illinois classification carries a rate of 38.7 cents, first class, from East St. Louis. In the reverse direction the maximum violation between Paducah, Ky., and East St. Louis, Ill., is at Wilderman, Ill., 144 miles from Paducah, which station carries a first-class rate of 37.5 cents, as compared with the first-class rate to St. Louis of 36 cents. The rates between St. Louis and East St. Louis, on the one hand, and Cairo, on the other, are governed by the Illinois classification. There are no long-and-short-haul deviations in the class

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rates between these points, but there are such deviations as to commodity rates.

The foregoing will suffice to show the conditions under which certain of the carriers north of the river operate. From the record there can be no question as to the reality of the actual water competition between St. Louis, East St. Louis, and Ohio River points. It is also clear from the record that there is actual water competition between the Ohio River crossings themselves. No attack is made upon the rates to the intermediate points, via the lines of any of the petitioners, nor do these rates upon inspection appear to be unduly discriminatory. In further justification of the adjustment north of the river, the carriers whose rates do not conform to the rule of the fourth section set up in support of the reasonableness *per se* of their rates to the intermediate points the finding of the Commission in the so-called *Five Per Cent Case*, 31 I. C. C., 351, 403. The class rates and many of the commodity rates were there permitted to be increased with the limitations prescribed in said report.

In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 162, we said:

The rate situation in the southeast presents many cases where the Commission must exercise that discretion vested in it by law to relieve the carriers from a rigid application of the long-and-short-haul rule in special cases.

In that case we recognized the water competitive conditions of the Ohio and Mississippi rivers as necessitating lower rail rates between the river points than otherwise would obtain. In principle, the rate adjustments under consideration are not dissimilar to those there considered, except as to the different classifications involved.

At page 178 of our report in that case we said:

While it is not beyond the power of the Commission to investigate and determine the reasonableness of the rates to each intermediate point, for the present it is not deemed advisable that the great length of time which would be necessary for that purpose should be taken before dealing with the general question that is before us. We will not, therefore, delay the disposition of the general question for this purpose, but any injustice that may result from individual instances of excessive rates to particular points will, upon complaint and investigation, be dealt with and corrected as occasion may hereafter arise. The Commission will confine itself in the disposal of these cases to an examination of the rates to the maximum rate points to ascertain whether or not such rates, as judged by the standards of comparison with other rates made for like distances under circumstances fairly similar in character, appear to be excessive or unreasonable.

What we there said is equally applicable to the matter under consideration, and therefore, in view of all the facts of record, we hold that the carriers operating between the different river crossings north of the river, except as hereinafter indicated, should be allowed

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to meet the water competition between these points by continuing lower rates between the said river points than are contemporaneously maintained on like traffic at intermediate points, provided the rates at the said intermediate points do not exceed the lowest combination, and that the present rates at the intermediate points are not exceeded.

The record shows that some of the routes of the petitioning carriers operating between certain of the river crossings are so markedly circuitous as compared with the more direct lines between the same points that we should not authorize a continuance of those routes under rates that contravene the fourth section. For illustration, the Pennsylvania system operates between five Ohio River points and St. Louis, Mo., namely, Cincinnati, Ohio, Louisville, Ky., and Madison, Jeffersonville, and New Albany, Ind., the junction points being via Richmond, Ind., and Indianapolis, Ind., respectively. The rates via these routes conform to the fourth section. The Pennsylvania system also operates from all of the Ohio River points above named into Chicago. The same rates between the Ohio River crossings and St. Louis are made applicable by its lines via Chicago in connection with the Chicago, Burlington & Quincy, Chicago & Alton, Illinois Central, and Chicago & Eastern Illinois railroads. From stations north of Logansport, Ind., on traffic routed through Chicago to East St. Louis there is published a higher scale of rates than is in effect from the Ohio River points, and it is therefore on such traffic routed through Chicago that the Pennsylvania system is in contravention of the fourth section of the act. Were the Chicago routes closed these departures would automatically be eliminated, and this the Pennsylvania system admits would have to be done should relief be denied, as it could not afford to correct the departures via the Chicago routes by reducing the rates to and from intermediate points, as to do so would disturb its entire rate fabric. The short-line distance of the Baltimore & Ohio Southwestern between Cincinnati and East St. Louis is 339 miles, while the distance between the same points by the Pennsylvania system via Chicago and the Chicago, Burlington & Quincy Railroad is 645 miles, or 195 per cent of the short-line mileage. From Madison, Ind., via Chicago the route is 217 per cent of the short-line mileage between Cincinnati and East St. Louis; from Jeffersonville, Ind., 240 per cent; from New Albany, Ind., 246 per cent; and from Louisville, Ky., 240 per cent of the short-line mileage of the lines operating between these points and East St. Louis. The routes via Chicago and the Chicago & Alton, the Illinois Central, and the Chicago & Eastern Illinois railroads are equally as long as those just shown. In other instances the routes are circuitous to the extent of from 200 to 304 per cent of the short-line mileage. In some instances the carriers have expressed their willingness to retire from the business in order that the traffic

might route via shorter and more workable lines to which it would appear properly to belong. It is our opinion that this action is in line with the intent of the law as amended.

In disposing of fourth section applications of carriers having crossings respecting sugar rates, *Sugar Rates from New Orleans*, 32 I. C. C., 606, we said:

No general maximum limitation as to the extent that the long line may exceed the short line in length will be included in the order as a condition upon which this relief is granted. This does not mean, however, that it is the view of the Commission that these lines may depart from the fourth section in meeting via unreasonably circuitous routes rates in effect via direct lines. It is expected that the circuitous lines will refrain from continuing departures from the fourth section in cases where there is an unreasonably great disparity between the distance via their route and the distance via the short line and not attempt to compete via very circuitous routes with lines one-half to one-third as long.

The principle of the decision in that case is equally applicable to the situations here, and we shall, therefore, in this instance deny relief to all carriers operating routes between St. Louis or East St. Louis and the various Ohio River crossings via Chicago and Chicago junctions, believing that participation in this traffic can result in but little, if any, profit to these carriers or benefit to the public. Should it subsequently be found that other situations similar to this one are continued, such further orders as may be necessary in each instance will be made.

LINE SOUTH OF THE OHIO RIVER.

The water competition which we have found has depressed the rail rates between the river crossings to a level lower than the rates applied to intermediate points north of the Ohio River has brought about a similar condition as to the rates south of the river. This is especially true in the case of the Louisville, Henderson & St. Louis Railway. This carrier operates wholly within the state of Kentucky. It extends from Strawberry, Ky., its eastern terminus, about 6 miles south of Louisville, to Henderson, Ky., its western terminus, 144 miles from Louisville. It operates trains between Louisville, Ky., and Evansville, Ind., with trackage arrangements over the lines of other carriers from Strawberry to Louisville, and from Henderson into Evansville. There is also a branch line extending from Irvington, Ky., to Fordsville, Ky. The Louisville, Henderson & St. Louis Railway practically parallels the Ohio River, and traverses a thinly populated and more or less unproductive section of the state of Kentucky. More than one-half of its tributary territory consists of high hills, deep valleys, and rocky bluffs along the Ohio River where much land is unproductive and but little cultivated. Because of its proximity to the Ohio River, washouts and interruptions to

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service are frequent. Due to its location this carrier can draw traffic from one side of the river only. A number of its local stations are either directly on the river or so close as to make it easy and practicable to ship by steamboat. Therefore, traffic that would otherwise be local is divided with the boat lines. The steamboats make low rates to secure their share of the business, and competition is keen.

The proximity of the Ohio River has had a marked effect in reducing the general level of all rates of this carrier to and from intermediate points below what would ordinarily have been applied under other conditions. This competition is concentrated at the commercial centers of Louisville, Henderson, and Owensboro. In the *Eagle Distillery Case*, 32 I. C. C., 195, 197, we held that "it can not be disputed that the rates, both at Henderson and Owensboro, are materially influenced by competitive water as well as rail rates." In passing upon that portion of the Fourth Section Application No. 1065 of this carrier respecting rates on lumber from Lodiburg, Ky., to central freight association territory which are higher than rates on the same commodity from Louisville, Owensboro, and Henderson, Ky., we found that the route of this carrier was in all instances markedly circuitous, and the water competition was there recognized as having compelled lower rates at the terminal points than at intermediate points, and fourth section relief was granted. The record in the instant case contains evidence equally convincing of the controlling and compelling existence of water competition at the depressed rate points. The rates to the intermediate points on the line of this carrier are made by combination on the low-rated points. The local scale of rates has been approved by the Kentucky commission, and that commission has recognized the water competition between the river points as a reason for permitting this and other carriers operating in the state of Kentucky to depart from the long-and-short-haul clause of the Kentucky law.

The Louisville, Henderson & St. Louis has never paid a dividend to its stockholders since its incorporation. Its net income over and above operating expenses from all sources for the seven years ending June 30, 1914, aggregates only \$40,717.04, and it is not to be doubted that this surplus would be turned into a deficit were this carrier denied relief to continue its present adjustment of rates. Its entire rate adjustment is built up around Louisville, Owensboro, Henderson, and Evansville, and if it is compelled to observe the rates applying to and from these points as maxima to and from its intermediate stations, the necessary result will be a blanket adjustment over its entire line, and a reduction in its total revenue so great as to make it doubtful whether it could earn operating expenses. Its present rates

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to intermediate local stations do not appear to be unreasonable by the tests and standards usually applied for that purpose, and there is now no complaint on file against them. It is our opinion that this is a proper case for relief.

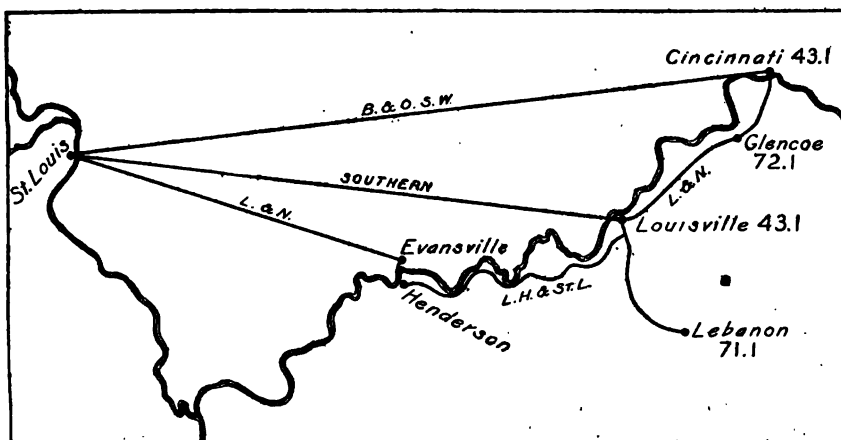
The other principal carriers operating between the Ohio River crossings south of the river are the Louisville & Nashville Railroad between Louisville and Cincinnati, which is the short line between these points, and the Louisville & Nashville between Louisville, on the one hand, and Henderson, Ky., and Evansville, Ind., on the other, in connection with the Louisville, Henderson & St. Louis Railway. This is the short route between these points. The Louisville & Nashville routes all of its traffic between St. Louis and Louisville and Cincinnati, and between Louisville and Evansville, via this route. The Illinois Central Railroad operates between Cairo, Paducah, Henderson, Evansville, Owensboro, and Louisville.

The rate situation south of the river being likewise influenced by the water competition, we believe that this is a case where the Commission must exercise that discretion vested in it by the law to relieve these carriers from a rigid application of the long-and-short haul rule of the fourth section. Therefore, except as hereafter indicated in the report, and to the extent provided in the order entered herein, relief will be granted the applicants to continue competitive rates between the river points via routes south of the Ohio River and to maintain higher rates at intermediate points, provided the present rates at said intermediate points are not exceeded. We hold to the views expressed respecting the unreasonably circuitous routes north of the river, and it is expected that the circuitous lines south of the river will also refrain from continuing departures from the fourth section in cases where there is an unreasonably great disparity between the distances via their routes and the distances via the short lines.

A typical example of a route of this character is afforded by that of the Louisville & Nashville Railroad between Evansville and Louisville, via Guthrie, Ky. The distance via this route is 272 miles, as compared with 122 miles via the short line of the Southern Railway, or more than 100 per cent longer than the short line between the same points. The Louisville & Nashville Railroad, it is asserted, does not actively compete via its longer route with the short lines of the Southern Railway and the Louisville, Henderson & St. Louis Railway between these points. Nevertheless, it desires such relief from the fourth section via this route as will permit it to transport traffic at the current rates applicable via the direct lines between these points whenever blockades or other interferences with traffic occur via the shorter lines. It will be observed that this route, like

that of the routes between Ohio River crossings and St. Louis, via Chicago, is extremely circuitous. There is no great difference between the underlying reasons offered by the applicants in support of their petitions in respect to the two situations. In both cases they desire to keep open all available routes between competitive points, and every reason that was or could be urged in the one situation might be urged with equal force in the other. It follows, therefore, that they should both be dealt with in the same manner. The routes via Chicago have been denied relief from the fourth section. Relief should also be denied via the route of the Louisville & Nashville Railroad through Guthrie, and it will be so ordered. Should it subsequently be found that other situations similar to this one are continued, further orders similar to the one in this case will be made.

The following diagram clearly sets forth the character of the violations occurring at points south of the river on through traffic originating in central freight association territory:



It will be observed that the Baltimore & Ohio Southwestern, operating wholly in central freight association territory under official classification, is the direct route from St. Louis to Cincinnati. The distance via this route, as before stated, is 339 miles, and the first-class rate from St. Louis to Cincinnati is 43.1 cents. The Southern Railway and the Louisville & Nashville Railroad must, in order to participate in the Cincinnati business, make the same rate via their circuitous routes as is made by the direct route of the Baltimore & Ohio Southwestern. Glencoe, Ky., is located on the line of the Louisville & Nashville Railroad 70 miles beyond Louisville in the direction of Cincinnati. There being no through rate to Glencoe, the charges are made on the lowest combination, which would be the rate to Cincinnati, plus the local from Cincinnati, which is governed by the southern classification. The rate to Cincinnati being 43.1

cents, and the local rate from Cincinnati to Glencoe being 29 cents, the total through charge would be 72.1 cents. If the traffic were routed to Glencoe via Cincinnati there would be no fourth section deviation, but when routed through Louisville there is a fourth section departure, because the total charge to Glencoe is higher than the through charge to Cincinnati, a more distant point. It will be seen by the above chart that Lebanon, Ky., which is 67 miles from Louisville in the direction of Knoxville, and practically equidistant from the point of origin with Glencoe, takes a rate practically equal to that of Glencoe.

The Commission, in *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 204, fixed the interstate factor from Louisville to Lebanon at 35 cents, and it is claimed that the factor from St. Louis to Louisville is a highly competitive rate influenced by the central freight association scale and depressed by both rail and water competition. Lebanon has no lower rated terminal or other lower rated station beyond, but Glencoe, because of its location, is entitled to the present St. Louis-Cincinnati rate plus the local rate from Cincinnati to Glencoe, which produces a deviation from the fourth section.

The petitioners claim that this is a special case warranting relief, and that by a comparison of the through rate to Glencoe with the through rate to Lebanon the Glencoe rate must be held to be reasonable *per se*, and the relief prayed be granted.

The rates to Glencoe and the other intermediate points on the line of the Louisville & Nashville in Kentucky have no relation whatsoever to the through rates in effect between St. Louis and Cincinnati made in accordance with the official classification. This Commission has frequently commented upon the more favorable traffic conditions obtaining north of the Ohio River than in the territory south of the river, resulting from greater traffic density and more favorable operating conditions north of the river, as a reason for the higher plane of rates south of the river.

The following comparisons compiled from the twenty-fourth and twenty-fifth annual reports of this Commission were introduced to show the difference in the traffic density between the two territories:

Comparison of tonnage and population in the territories immediately north and south of the Ohio River.

	Population.	Area in square miles.	Tons of revenue-earning freight carried.	Tons of revenue-earning freight carried per 1,000 population.
C. F. A. territory immediately north of Ohio River (group III).....	11, 073, 415	125, 422	354, 456, 705	31, 936
Southern territory immediately south of Ohio River (group V).....	12, 431, 770	299, 671	110, 637, 861	8, 899

While by comparison the Glencoe rate does not at first glance appear to bear a reasonable relation to the rate to Cincinnati, yet we are of opinion that this is a proper case for relief. This situation is typical of the rates to points south of the river.

The rates to the maximum rate points on the lines of the carriers operating south of the river in some instances appear to be unreasonable when compared with the lower rates to the water competitive points, but when considered by themselves they do not clearly appear to be unreasonable in amount or out of line with rates made to contiguous points in the same territory. We have frequently held that lower rates which are forced by water competition can not be accepted as a measure of reasonableness of rates from or to points where such competition does not exist. *South Atlantic Waste Co. v. Southern Ry. Co.*, 22 I. C. C., 293-296; *Cohen & Co. v. Mallory S. S. Co.*, 23 I. C. C., 374-377; *In re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151-160; and *Truck Growers' Association v. A. C. L. R. R. Co.*, 20 I. C. C., 190-194.

There are no complaints on file against the reasonableness *per se* of the rates to points south of the river, and therefore, in view of all of the facts and circumstances appearing as hereinbefore set forth, and except as hereinbefore provided, these applicants will be permitted, until it may be otherwise ordered upon future investigations in particular cases, to continue to charge lower rates on classes and commodities to the water competitive points, and to maintain higher rates to intermediate points as now provided in their tariffs, provided that the rates to the said intermediate points do not exceed the lowest combination and that the present rates to intermediate points are not exceeded.

An appropriate order will be entered.

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No. 6960.¹

VANDENBOOM-STIMSON LUMBER COMPANY ET AL.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY.

Submitted April 10, 1915. Decided February 15, 1916.

Rates charged by defendants for the transportation of hardwood logs and bolts in carloads from points in Arkansas, Louisiana, and Oklahoma to Memphis, Tenn., found unreasonable and unduly prejudicial. Scale of reasonable maximum rates prescribed. Reparation awarded.

J. R. Walker and J. H. Townshend for complainants.

H. G. Herbel and F. G. Wright for St. Louis, Iron Mountain & Southern Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These cases are related and will be disposed of in one report. Complainants are individuals, firms, and corporations engaged in the lumber business at Memphis, Tenn. By complaints, filed May 27, 1914, and October 30, 1914, as amended, they allege that the rates charged by the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, for the transportation of hardwood logs in carloads, and by the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, for the transportation of hardwood bolts and logs in carloads, from points on their respective lines in the states of Arkansas, Louisiana, and Oklahoma to Memphis are unreasonable and unduly prejudicial as compared with rates to other points and with rates applicable on Arkansas intrastate traffic. The complaint in No. 7444 (Sub-No. 1) asks reparation on 289 carloads of hardwood logs shipped from Tinsman, Ark., to Memphis over the Rock Island during the period from August 30, 1913, to December 8, 1914.

¹ The proceeding also embraces complaints in—No. 7444, Memphis Band Mill Company et al. v. Chicago, Rock Island & Pacific Railway Company, and No. 7444 (Sub-No. 1), Nickey Brothers & Bass v. Same.

The Rock Island's rates on logs for distances exceeding 100 miles are, as a general rule, the same as on lumber. For distances of 100 miles and less special rates apply on logs, which are lower than rates on lumber, and from $1\frac{1}{2}$ cents to $2\frac{1}{2}$ cents per 100 pounds higher than Arkansas intrastate rates on logs for corresponding distances. Its rates to Memphis from all points are "flat" or local rates. On the Iron Mountain a system of "gross" and "net" rates is operative. The gross rate, which is the same as the rate on lumber, is collected on the logs to the milling point in the first instance. Upon the shipment over its lines from the milling point of lumber within one year from the date of expense bills covering the inbound shipments of logs, in the proportion of 1 pound of lumber to 8 pounds of logs, the difference between the gross and the net rate is refunded. Complainants ask for net rates over the Iron Mountain to Memphis which do not exceed by more than 1 cent per 100 pounds the net or reshipping rates of that carrier applicable to the transportation of logs and other so-called rough material for corresponding distances wholly within the state of Arkansas. They also ask for the establishment of gross rates from points on the Iron Mountain which are 1 cent per 100 pounds higher than the net rates asked and say that they are not opposed to the maintenance by the Rock Island of a transit arrangement whereby a gross rate not exceeding the net rate by more than 1 cent per 100 pounds is collected in the first instance and the subsequent application of the net rate is made conditional upon the shipment of lumber over that line.

The rails of both defendants terminate at Bridge Junction, Ark., but they maintain terminals at Memphis and operate their trains between Bridge Junction and Memphis over the bridge of the Kansas City & Memphis Bridge Company, a subsidiary of the St. Louis & San Francisco Railroad Company. Defendants pay a bridge toll of 1 cent per 100 pounds, minimum \$3.50 per loaded car, and \$1 per empty car on the number of empties in excess of the number of loaded cars moved across the bridge. Although complainants ask for the establishment of rates which are 1 cent per 100 pounds higher than the Arkansas scale, they do not concede that it is reasonable to add a bridge toll of 1 cent per 100 pounds in constructing rates between Memphis and points west of the Mississippi River and introduced certain testimony and exhibits to prove that the amount paid by defendants for the use of the bridge is excessive. However, the company owning the bridge is not a party defendant, and complainants' evidence regarding the cost of service and other matters affecting the reasonableness of the charge does not justify a finding that the addition of a bridge toll of 1 cent per 100 pounds results in unreasonable rates between points west of the river and Memphis.

Complainants' mills are located on the terminals of the Illinois Central Railroad and on the Union Railway. The Iron Mountain controls, and its rates include delivery on, the Union Railway. Shippers pay a switching charge which is usually \$2 per car for deliveries on the terminals of other lines. The net rates of the Iron Mountain are constructed by adding 2 cents per 100 pounds to the Arkansas net rate to Bridge Junction. This arbitrary represents the bridge toll of 1 cent per 100 pounds and a special terminal charge of 1 cent per 100 pounds for Union Railway delivery. Complainants contend that an additional charge for terminal delivery is not justified because that expense is included in the rate for the line haul and the cost of this service at Memphis is not excessive as compared with other points. On behalf of the Iron Mountain it was urged that the Memphis terminal was constructed at great expense; that it comprises an extensive switching district; and that the charge of 1 cent per 100 pounds approximates the charge for a similar switching service at St. Louis, where conditions comparable with those at Memphis are said to prevail.

Logs are loaded along the main lines of both defendants by individuals or companies operating log loaders whose services are paid for by the shipper and to whom engines and crews are leased by the carriers under the provisions of their tariffs at a rate which it is stated covers only the actual cost of the crews, and rental, fuel, and lubrication for locomotives. The operation of log loaders interferes with train service and causes considerable damage to the carriers' cars and roadbed, but is said to be necessary because the marshy character of the country and the lack of roads preclude the hauling of logs to stations. The logs are loaded on flat cars, which frequently are moved empty for long distances.

Witnesses for defendants testified that operating expenses in Arkansas are greater than on other portions of their lines, and that their business within that state does not yield a proper return; further, that their tracks are laid on fills and trestles which are expensive to construct and deteriorate rapidly because of the nature of the soil, heavy rainfall, and frequent overflows. On behalf of the Rock Island testimony was offered showing that during the years 1912, 1913, and 1914 the cost of maintenance per mile of road in Arkansas was \$1,822.75, \$1,731.41, and \$1,487.50, respectively, as compared with \$785.56, \$762.93, and \$811.34 in Oklahoma during the same periods. An exhibit filed by the Rock Island indicates a loss of \$317,175 on Arkansas intrastate traffic for the year ending June 30, 1914, of which \$148,899 represents the deficit from freight operations.

The following table presents a comparison of the present rates and rates asked with Arkansas intrastate local rates, rates of the Yazoo & Mississippi Valley Railroad to Memphis, and the Alabama Great Southern Railroad to Chattanooga:

[Rates in cents per 100 pounds.]

Distance.	To Memphis from Arkansas, Louisiana, and Oklahoma points.					Arkansas rates.		Yazoo & Mississippi Valley rates to Memphis.		Alabama Great Southern rates to Chattanooga, local.	
	Present rates.				Rates asked.		Net.	Gross.	Net.		Gross.
	C., R. I. & P. Ry.	St. L., I. M. & S. Ry.		Net.	Gross.						
		Net.	Gross.								
10 miles and under....	3.5	4.0	5-6.0	3.0	4.0	2.0	3.0	1.25	1.75	2.0	
25 miles and over 10....	4.5	4.0	6.0	3.0	4.0	2.0	3.0	1.75	2.25	3.0	
50 miles and over 25....	5.0	4.5	7-8.0	3.5	4.5	2.5	4.0	3.0	3.5	3.5	
75 miles and over 50....	5.0	5.0	8-9.0	4.0	5.0	3.0	4.5	4.0	4.75	4.5	
100 miles and over 75....	6.0	5.5	9-10.0	4.5	5.5	3.5	5.0	4.5	5.0	5.5	
125 miles and over 100....	8.0	6.0	9-11.0	5.0	6.0	4.0	6.0	5.0	6.0	6.0	
150 miles and over 125....	8.0	6.5	11.0	5.5	6.5	4.5	6.0	5.0	6.0	6.5	
175 miles and over 150....	¹² 8.0-11.0	7.0	11.0	6.0	7.0	5.0	7.0	5.5	6.5	7.0	
200 miles and over 175....	¹² 11.0	7.5	11-12.0	6.5	7.5	5.5	7.0	6.0	7.0	7.0	
225 miles and over 200....	¹² 13.0	8.0	11-12.0	7.0	8.0	6.0	8.0	6.5	7.5	7.5	
250 miles and over 225....	¹² 13.0	8.5	11-12.5	7.5	8.5	6.5	8.0	6.5	7.5	8.0	
275 miles and over 250....	¹² 13.0	8.5	11-12.5	7.5	8.5	6.5	9.0	6.75	7.75	8.0	
300 miles and over 275....	¹² 13.0	9.0	11-12.5	8.0	9.0	7.0	9.0	7.0	8.0	8.5	
325 miles and over 300....	¹² 13.0	9.0	11-12.5	8.0	9.0	7.0	10.0	7.0	8.0	8.5	
350 miles and over 325....	¹² 13.0	9.5	11-12.5	8.5	9.5	7.5	10.0	7.0	8.0	8.5	
375 miles and over 350....	¹² 14.0	9.5	11-14.0	8.5	9.5	7.5	10.0	7.25	8.25	8.5	
	¹² 14.0	10.0	14.0	9.0	10.0	8.0	12.0	7.5	9.0	9.0	
	¹² 14.0	10.5	14.0	9.5	10.5	8.5	12.0	7.75	9.25	9.25	
	¹² 14.0	11.0	14.0	10.0	11.0	9.0	12.0	8.0	9.5	9.5	

¹ Lumber rates; no special rates on logs.

² Applies from stations south of Walco.

¹¹ 11 cents prior to Feb. 1, 1915. I. & S. 184.

¹² 12 cents prior to Feb. 1, 1915.

The gross rates of the Yazoo & Mississippi Valley shown in the above table were considered in *May Bros. v. Y. & M. V. R. R.*, 26 I. C. C., 323, and found not to be unreasonable. The local rates of the Alabama Great Southern to Chattanooga were prescribed in *Chattanooga Log Rates*, 30 I. C. C., 36, and 35 I. C. C., 163. The net rates asked, which, as previously stated, are 1 cent per 100 pounds higher than the Arkansas scale of net rates, are the same as those of the St. Louis & San Francisco Railroad to Memphis from points west of the Mississippi River and are 1 cent per 100 pounds higher than its rates to Memphis from points east of the river. On interstate traffic between points in the states of Arkansas, Louisiana, and Oklahoma defendants apply net rates for distances of 170 miles and less, which are the same as the Arkansas net rates. For distances exceeding 170 miles their net rates are somewhat higher but are less than the Arkansas local or gross rates. A comparison of defendants' ton-mile earnings in mills and car-mile earnings in cents on logs under the present 38 I. C. C.

and proposed rates with earnings on all commodities is shown in the following table:

	Average ton-mile revenue.	Average car-mile revenue.	Average haul all commodi- ties.
<i>St. L., I. M. & S. Ry.:</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>
Average, all commodities.....	7.90	14.44	235
Present rates on logs.....	7.23	13.07	235
Proposed rates on logs.....	6.38	15.95	236
<i>C., R. I. & P. Ry.:</i>			
Average, all commodities.....	8.85	13.86	289
Present rates on logs.....	10.88	27.19	289
Proposed rates on logs.....	6.27	15.69	289

The disparity between the net and gross rates of the Iron Mountain is much greater than that disclosed by rates of the Yazoo & Mississippi Valley, or the rates of various other lines shown in exhibits filed by complainants. It will be noted that the gross rates of the Yazoo & Mississippi Valley are the following differentials higher than the net rates: 100 miles and less, one-half cent to three-fourths cent; 300 miles and over 100, 1 cent; over 300 miles, 1½ cents. The difference between the gross and net rates of the Iron Mountain ranges from 1 to 5 cents. Complainants assert that the payment of the present gross rates involves such a large deposit for long periods of funds upon which no interest is paid that they can not afford to ship logs except from certain near-by points from which the disparity between the net and gross rates is not so great. The Rock Island has no direct line from Memphis to the principal lumber markets north of the Ohio and east of the Mississippi rivers, and therefore has not observed the practice of maintaining a system of net and gross rates followed by other lines serving Memphis. From the record it appears that the number of lumber shipments forwarded from Memphis via the Rock Island is small in comparison with the lumber traffic of the Illinois Central, Iron Mountain, and other lines from Memphis.

Defendants contend that there is no necessity for establishing special rates on logs for distances exceeding 100 miles, because throughout the lumber-producing section mills are located but short distances apart and competition of lumber manufacturers in the purchase of logs and a substantial parity of outbound rates on lumber preclude the movement of the ordinary grades of logs except for short distances. It is said that a difference in rates of less than 1 cent is sufficient to determine which of two competing points can profitably use the logs from a particular locality. The average distance logs are shipped within the state of Arkansas is 20 to 25 miles. On shipments involved in this proceeding the average haul to Memphis from Iron Mountain points was about 35 miles, and from Rock Island points about 70 miles. Eliminating the 289 carloads

shipped from Tinsman, 228 miles from Memphis, the average haul on the Rock Island would approximate the average haul on the Iron Mountain. Defendants urge that since only high-grade logs can be shipped for greater distances than 100 miles there are no reasons why lumber rates should not be charged for the transportation of such shipments. This contention ignores the difference in value between logs and lumber and disregards the fact that, as a general rule, rates on raw material are lower than on the manufactured product.

From testimony offered by complainants, it appears that ordinary grades of logs can not profitably be shipped to Memphis except from near-by points in Arkansas and that the inability of the Memphis manufacturers to handle the lower grades of logs in competition with Arkansas mills also handicaps them in the purchase of higher grade logs since, in order to obtain the better quality of timber, they must also purchase the inferior grades. It is said that 60 per cent of the hardwood timber in Arkansas adjacent to Memphis consists of gum; that neither gum nor elm can be shipped under the present rates, and that the establishment of the rates prayed would result in a much larger movement of logs to Memphis. Defendants argue that, because of the excessive waste in manufacture, where logs can be and are sawed at mills near the source of supply it is wrong in principle to inaugurate a system of rates which will permit them to move to more distant points. However, as we said in *Boise Lumber Co. v. P. & I. N. Ry. Co.*, 33 I. C. C., 109, 115:

It is not within the province of carriers to dictate where manufacturing shall or shall not be done, or by means of their rate adjustments or otherwise to select or control the markets where their shippers shall buy or sell.

The carriers are under no obligation to establish less than reasonable rates for the purpose of overcoming any disadvantage Memphis may suffer by reason of greater distance from the source of supply, but manifestly they may not deny to the Memphis manufacturer the right to compete with Arkansas mill operators by maintaining rates which are unjustly discriminatory.

Complainants' principal competitors in Arkansas are located at Helena, Forest City, Round Pond, Marianna, Winona Spur, Democrat, Hughes, Parkin, Earle, Crittenden, Brown's Spur, Brasfield, and Mounds. Lumber rates from Helena to central freight association territory are only 1 cent per 100 pounds higher than from Memphis, and as logs yield one-third or less of their weight in lumber, it is apparent that Memphis is under a substantial disadvantage in competing with Helena under the present rate adjustment. Rates on lumber from the other Arkansas points mentioned are somewhat higher than from Helena, but by reason of the materially lower rates on logs mill operators at these points have a
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very substantial advantage over a manufacturer of lumber at Memphis.

Defendants say that the Arkansas intrastate rates are too low and that if undue discrimination exists it should be removed by an increase in the Arkansas rates rather than by a reduction in the rates to Memphis. It appears, however, that prior to the organization in 1900 of the Railroad Commission of Arkansas defendants maintained rates on logs applicable to Arkansas intrastate traffic which, with certain exceptions, were somewhat lower than the rates now in effect. Following an attempt by the Iron Mountain in 1907 to increase its rates, the Arkansas commission prescribed net rates which were practically the same as those the Iron Mountain had sought to increase. Then followed a period of litigation, as a result of which the present scale was made effective.

There is a striking similarity between the situation presented by these complaints and that considered in *Keogh v. M., St. P. & S. Ste. M. Ry.*, 26 I. C. C., 73. In that case complainant shipped material used in the manufacture of excelsior and flax tow from points in Wisconsin to St. Paul, Minn. His principal competitors were located at points in Wisconsin from which outbound rates on excelsior and flax tow were substantially the same as from St. Paul. Defendant's intrastate rates to those points on the raw material were much lower than their interstate rates to St. Paul, and, following the *Shreveport case*, 23 I. C. C., 31, the latter were held to be unjustly discriminatory. The same conclusion was reached in *Transit Rates on Logs and Staves at Alexandria, La.*, 34 I. C. C., 169, which involved a similar state of facts.

Upon consideration of all the facts of record, we find that the present local or flat rates of the Rock Island on hardwood logs and the present gross rates of the Iron Mountain on hardwood bolts and logs from points on their respective lines in the states of Arkansas, Louisiana, and Oklahoma to Memphis are unreasonable to the extent that they exceed the rates per 100 pounds shown in the following table, which rates are found reasonable and will be prescribed as maxima for the future:

Distances.	Cents.	Distances.	Cents.
25 miles and under	4.0	240 miles and over 225	9.0
50 miles and over 25	5.0	250 miles and over 240	9.0
75 miles and over 50	5.5	260 miles and over 250	9.5
100 miles and over 75	6.0	275 miles and over 260	9.5
125 miles and over 100	6.5	280 miles and over 275	10.0
150 miles and over 125	7.0	300 miles and over 280	10.0
175 miles and over 150	7.5	325 miles and over 300	10.5
200 miles and over 175	8.0	350 miles and over 325	11.0
225 miles and over 200	8.5	375 miles and over 350	11.5

Defendants' present carload minimum is 40,000 pounds, except when the marked capacity of the car used is less, or a car of less capacity than 40,000 pounds is ordered and a larger car is furnished at the carrier's convenience. We find this minimum to be reasonable in connection with the rates prescribed herein.

As hereinbefore stated, it is not alleged by complainants that the maintenance by the Rock Island of gross and net rates on Arkansas intrastate traffic, and not on traffic from Arkansas, Oklahoma, and Louisiana points to Memphis, results in unjust discrimination, and we will therefore consider only the local rates of that carrier to Memphis. We are of opinion, and find, that the application by the Rock Island of local rates on shipments of hardwood logs, and by the Iron Mountain of gross and net rates on hardwood bolts and logs from points of origin in said states to Memphis, which exceed by more than 1 cent per 100 pounds the rates for the transportation of like shipments for corresponding distances between points in Arkansas, or from points in Louisiana and Oklahoma to points in Arkansas, subjects complainants and interstate traffic therein involved to undue prejudice and disadvantage in violation of section 3 of the act.

There remains for consideration the question of reparation on shipments from Tinsman to Memphis consigned to Nickey Bros. & Bass, involved in No. 7444 (Sub.-No. 1), upon which a rate of 11 cents per 100 pounds was charged. Tinsman is located on the main line of the Rock Island, 95 miles south of Little Rock and 228 miles from Memphis. A special commodity rate on logs of 8 cents per 100 pounds was contemporaneously in effect from Haskell, Ark., 64 miles north of Tinsman on the same line, and from Camden, Ark., located on a parallel branch line approximately the same distance from Memphis as Tinsman. The 8-cent rate from Camden and intermediate points on the Camden branch south of Walco, Ark., was canceled, effective March 23, 1915, and is said to have been published through error. The net rate to Memphis from Warren and Monticello, Ark., points on the Iron Mountain in the vicinity of Tinsman, was 8 cents per 100 pounds. The net rate for corresponding distances within the state of Arkansas was $6\frac{1}{2}$ cents and the gross rate 8 cents. The average weight of the shipments was 59,121 pounds per car. The rate of 11 cents yielded earnings per ton-mile, 9.65 mills; per car-mile, 28.52 cents. Based on the average weight stated the rate of 9 cents herein prescribed for this distance will yield 7.89 mills per ton-mile and 23.33 cents per car-mile.

Upon all the facts of record we find that the rate charged on the shipments involved was unreasonable to the extent it exceeded 9 cents per 100 pounds. We further find that complainant made shipments

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in accordance with the foregoing statement of facts and paid and bore charges thereon at the rate herein found to have been unreasonable; that said complainant has been damaged to the extent of the difference between the amount paid and the amount which would have accrued at the rate herein found to be reasonable; and that, therefore, it is entitled to an award of reparation. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, car number and initials, weight, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendant Rock Island for verification. Upon receipt of a statement so prepared by complainant and verified by that defendant, we will consider the matter further with a view to issuing an order awarding reparation.

An order in Nos. 7444 and 6960 will be entered in accordance with the findings herein announced.

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No. 7027.

HIRES CONDENSED MILK COMPANY ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted February 6, 1915. Decided March 14, 1916.

Less-than-carload and carload rates applicable under official classification on condensed and evaporated milk (liquid), in cans, boxed, held unreasonable and rates no higher than rule 28, less than carload; and fifth class with 36,000-pound minimum, carload, prescribed for the future. Reparation awarded on less-than-carload shipments.

J. H. Hayden and G. W. Dalseell for complainants.

E. L. Ballard, F. H. Burgess, and R. N. Collyer for defendants.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

The complainants are two corporations, jointly owned and controlled, manufacturing condensed and evaporated milk, with plants located at Malvern, Pa., and Enosburg Falls, Vt. From October, 1913, to April, 1914, a plant was operated, under lease, at Mansfield, Pa., and the complainants also operate at different times, under lease, a plant located at Bridgeton, N. J. The product of the complainants is shipped to customers in less-than-carload lots direct from their plants when convenient and economical; otherwise it is shipped in carload lots to distributing points like Boston, New York, Newark, Paterson, Trenton, Philadelphia, Pittsburgh, Baltimore, Richmond, and Norfolk.

It appears that for the year ending March 31, 1914, the complainants' shipments were as follows:

Point of origin.	Less-than-carload shipments.	Weight.	Carload shipments.	Weight.
	<i>Number.</i>	<i>Pounds.</i>	<i>Number.</i>	<i>Pounds.</i>
Malvern, Pa.	2,978	2,688,022	129	5,070,876
Philadelphia, Pa.	1,648	1,058,852		
New York, N. Y.	2,797	1,874,343		
Boston, Mass.	1,068	609,190		
Mansfield, Pa.	78	155,904	20	822,388
Bridgeton, N. J.	85	386,571	14	643,706
Enosburg Falls, Vt.	433	688,215	115	4,634,009

¹Oct. 22, 1913, to Mar. 31, 1914, only.

The complainants for the most part pack their product in tin cans, which are assembled for shipment in wooden cases or boxes varying in dimensions from 16½ to 19 inches in length, from 10½ to 12½ inches in width, and from 6½ to 9 inches in height. The boxes contain 48

cans each, placed in layers of 24 cans, and vary in gross weight from 40 to 66 pounds.

The transportation of all of complainants' product is governed by the official classification, and under item 4, page 204, of official classification No. 42, carried forward in No. 43, item 16, page 237, the rates assessable are as follows:

4. For milk, condensed or evaporated (liquid):

In milk shipping cans, subject to rates and regulations of individual carriers;

In glass or earthenware, packed in barrels or boxes, less than carload, first class;

In metal cans, completely jacketed in metal or wooden jackets, less than carload, second class;

In metal cans, in crates, less than carload, third class;

In metal cans, in barrels or boxes, less than carload, third class;

In bulk in barrels, less than carload, third class;

In glass or earthenware, packed in barrels or boxes, in metal cans completely jacketed in metal or wooden jackets, in metal cans in barrels, boxes or crates, or in bulk in barrels, carload, minimum weight 36,000 pounds, fourth class.

Under the classification the product of the complainants, packed in tin, in boxes, as heretofore indicated, takes the third-class rate, less than carload, or fourth-class rate, with a 36,000-pound minimum, when shipped in carload lots. These ratings are brought in issue by the complaint herein, in which it is alleged that the less-than-carload and the carload rates are unreasonable in and of themselves, and unjustly discriminatory as compared with rates on condensed and evaporated milk applicable in central freight association territory and with rates applicable from points in central freight association territory to points in trunk line territory. The Commission is asked to establish reasonable ratings for the future and to allow reparation on past shipments moving within the statutory period.

It appears that the carriers in central freight association territory, by exception to official classification, Morris's I. C. C. 406, effective August 1, 1913, as amended by I. C. C. 535, effective April 15, 1915, make applicable between points in central freight association territory rule 26, 20 per cent less than third class of official classification on shipments of condensed or evaporated milk, moving in less than carloads, in cans, boxed; in kegs, half barrels, or barrels; and by the same tariff fifth class, with minimum of 36,000 pounds, on carload shipments between points in central freight association territory and from points in central freight association territory to points in trunk line territory.

The result of these exceptions by central freight association lines is shown by complainants to operate prejudicially to them, in that their competitors located at points in central freight association territory are enabled thereby to reach competitive markets at less rates.

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At the hearing, in their briefs and on argument, the defendants conceded the merit of complainants' contention, with respect to discrimination, and this phase of the case is dismissed by the carriers with the statement that, effective May 1, 1915, they would cancel the objectionable exceptions. It does not appear, however, from examination of the tariffs on file with the Commission that this proposed action has been taken, and the above-noted exceptions are still in force and no tariff has been filed to date canceling same.

Whether the proposed action of the defendants, if executed, would remedy the discriminatory nature of the rate adjustment, which is admittedly unjust, is a question.

The Commission is of opinion and finds that the carload and less-than-carload rate adjustment of the defendants on condensed and evaporated milk, in cans, boxed, in and between eastern trunk line and New England territories, and from these territories to central freight association territory, as well as from central freight association territory to New England territory, is unjustly discriminatory against complainants in favor of their competitors shipping between points in central freight association and from points in central freight association territory to points in eastern trunk line territory. The defendants will be required to remove the discrimination herein found to be unlawful. While the proceedings in this case put in issue only the ratings on condensed or evaporated milk (liquid) when packed in metal cans, in boxes, nothing was made to appear warranting any difference in rating on these commodities when so packed and when in other forms of package which at present take the same ratings, viz, third class less than carload and fourth class carload, as set forth in the quoted item, *supra*.

REASONABLENESS OF PRESENT RATES.

In support of their contention that the rates applicable under the official classification on condensed and evaporated milk, in cans, boxed, are in and of themselves unreasonable, the complainants show that under that classification other food products, such as vegetables, fruit, meats, and fish, when packed in cans, boxed, take uniformly less than carload, rule 26, which is 20 per cent less than third-class rate, and in carloads, the fifth-class rate.

It appears that in value the product of the complainants is on a practical parity with the average of the canned food products taking the less rates, and it is admitted that the packages used by complainants in the shipment of their product are similar in dimensions, construction, finish, and weight per cubic foot to those used by canners of vegetables and other food products.

Detailed comparison between complainants' product and other canned articles taking the lower rates is shown in the following

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table furnished by complainants, which indicates for each commodity taken, the relative value, weight, and dimensions per case and per cubic foot:

Commodities.	Brand.	Cans in box.	Value.	Weight.	Dimensions.	Volume.	Value, per cubic foot.	Value, per pound.
				<i>Pounds.</i>	<i>Inches</i>	<i>Cu. ft.</i>		
Syrup.....	Med / Maple Syrup.....	24	\$4.90	50	16½x12½x 9½	1.11	\$4.41	\$0.095
Do.....	Lyles Fancy Gold.....	24	4.10	50	16½x12½x 9½	1.11	3.69	.072
Vegetables:								
Tomatoes.....	Mrs. Lipp. Brand.....	24	2.50	70	19 x13½x11	1.66	1.51	.040
Lima beans..	Little Quaker.....	24	2.80	47	15½x11 x10	.97	2.89	.067
String beans.	Pure Quill.....	24	3.00	47	15½x11 x10	.97	3.09	.071
Corn.....	Kornlet.....	24	4.30	47	15½x11 x10	.97	4.43	.045
Mushrooms..	Cho. All Buttons.....	100	17.25	100	30½x15½x10½	2.87	6.01	.173
Peas.....	Kelson French Imp.....	100	17.00	100	30½x15½x10½	2.87	5.92	.165
Do.....	Belle Rose, Dom.....	36	3.40	47	15 x11½x10	.97	3.50	.072
Asparagus..	Del Monte.....	24	5.20	66	16 x13½x10	1.27	4.09	.097
Fruits:								
Apricots.....	Golden Gate.....	24	5.40	70	19 x13½x11	1.66	3.25	.086
Cherries.....	White Royal Ann.....	24	7.10	70	19 x13½x11	1.66	4.27	.097
Peaches.....	Golden Gate.....	24	5.40	65	16 x13½x10	1.27	4.25	.092
Pears.....	Oro.....	24	5.90	70	19 x13½x11	1.66	3.55	.093
Strawberries.	Mrs. Hancock Brd.....	24	3.50	47	15½x11 x10	.97	3.61	.067
Pineapple.....	Paradise Island.....	24	3.60	65	16 x13½x10	1.27	2.80	.077
Condensed milk..	Silver Brand.....	48	4.50	57	19½x12½x 7½	1.01	4.46	.082
Do.....	Square Brand.....	48	3.30	57	19½x12½x 7½	1.01	3.03	.060
Evaporated milk.	Gold Brand Tall.....	48	3.35	68	18 x13½x10½	1.49	2.25	.054
Do.....	Gold Brand Baby.....	72	2.30	47	16½x10½x 8½	.84	2.74	.054
Meats.....	Libby's Peerless.....	24	6.10	35	19½x14 x 5½	.86	7.09	.129
Fish.....	B. & A. Lobster.....	24	12.70	30	20½x14½x 5½	.87	14.59	.333

In *Whiteland Canning Co. v. P., C., C. & St. L. Ry. Co.*, 22 I. C. C., 261, relied on by complainants, the Commission considered the reasonableness of the less-than-carload rates on evaporated milk made applicable by the cancellation of the exceptions in central freight association territory to official classification. Under the exceptions, the commodity in cans, boxed, took less than carload, rule 26, 20 per cent less than third class; when the exceptions were canceled, the official classification of third class was made applicable. It appeared that in size, value, and weight packages containing evaporated milk were similar to those in which canned vegetables and fruit were shipped which took less than carload, rule 26, 20 per cent less than third class in official classification; and it was held that the rates applicable under official classification on evaporated milk, less than carload, namely, third class, were unreasonable, since they were more than the rates applicable to other commodities shipped under the same circumstances and of the same value.

Only the carriers serving the complainant in that case with several of their connecting lines were parties defendant. After our decision was announced the New York Central lines, which were not parties, applied for a rehearing of the case on the ground that they were affected by the decision and wished an opportunity to present a fuller case to the Commission in defense of the official classification rating on evaporated milk. The defendants also applied for a rehearing.

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In denying the petitions for rehearing the Commission said in *Whiteland Canning Co. v. P., C., C. & St. L. Ry. Co.*, 23 I. C. C., 92, 94:

The petition does not show how the above evidence, if introduced, would alter the conclusions already reached.

The cited cases involved only the less-than-carload rate on evaporated milk, but it does not here appear that the same classification principles should not be employed relative to the carload rating as are applied in fixing the less-than-carload rate, and no contention is made herein that any distinction in classification should be made between condensed and evaporated milk, although condensed milk is a somewhat different product from evaporated milk by reason of the fact that in its manufacture 20 per cent of sugar is added.

While the Commission has never applied the principles of *stare decisis* and *res adjudicata* as they have been enforced in courts of law, we have uniformly held that where a particular rate adjustment or situation has previously been presented to the Commission and conclusions announced with respect thereto, the views so announced are controlling unless conditions are made to appear in a subsequent presentation which justify or require a different conclusion. *Ontario Iron Ore Co. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 566, 570; *Jouannet v. A. C. L. R. R. Co.*, 23 I. C. C., 392; *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684.

It should be noted that in a recent unreported opinion, Docket No. 6994, *Reymer & Bros. v. C. & N. W. Ry. Co.*, decided April 26, 1915, the Commission followed the *Whiteland Case*, supra, in fixing the rate on condensed milk from Geneva, Ill., to Pittsburgh, Pa.

The carriers defendant herein contend that in the cited cases the Commission did not have before it a full presentation of the situation from their point of view and that such presentation is made for the first time herein.

The evidence of the carriers introduced in this case consists of an exhibit setting forth the so-called "milk group" with the supporting testimony of their classification agent detailing the history of the milk group and pointing out how any lowering of the rating on condensed and evaporated milk would disrupt the whole group and bring about corresponding reductions in lower rated inferior milk products, which would, in turn, break down the rating on other articles with which these lower grade articles compete.

The record offered by the carriers is lacking in evidence showing the revenue results of the rates under attack and the rates sought by the complainants, and there is no contention on the part of the carriers that the rates sought are not compensatory and remunerative. Their case is rested solely on the reasonableness of the classification and the logic of the milk group adjustment.

The milk group adjustment is simply the classification of all derivatives of milk according to value and other determining qualities entering into classification considerations. Medicinal foods, such as malted milk, head the list, taking generally second class less than carload and third class with 30,000 pounds minimum in carloads; powdered milk follows, taking second or third class, according to packing, on less-than-carload shipments and fourth class with 30,000 pounds minimum in carloads; condensed and evaporated milk, less than carload, taking third class, and in carloads, fourth class, with 36,000 pounds minimum; then follows evaporated buttermilk, casein, casein glue taking rule 26, less than carload, and fifth class with 30,000 pounds minimum in carloads; other refuse products follow.

The force of the physical comparisons offered in proof by the complainants between evaporated, condensed milk, and other canned food products is denied by defendants, who contend that the importance of the principle that commodities should be classified so as to bear a proper relation to other related commodities completely outweighs any comparison with unrelated articles as to physical form, weight, and value. By related commodities it is inferred is meant articles which serve the same purpose or articles which are competitive. It is pointed out by defendants that the commodity here involved competes with fresh milk and cream.

The arguments of the defendants are not convincing. In the first place, fresh milk, the article related to that here under consideration, is not given a rate in the classification since it does not move as freight, hence the relationship is of no force in fixing a rating on a commodity which does move as freight. While it does not appear clearly from the record just what the physical relation is between condensed and evaporated milk and powdered milk, it does appear that these articles may be used as substitutes for fresh milk and for each other.

Tested by the defendants' argument the reduction of the rate on evaporated and condensed milk to the same mark as the rate on casein and other refuse products need not call for a reduction in the rating of the latter, since the two are not related commodities and can not be substituted for each other and do not compete with each other. Nor does it here appear that there would be any more reason for reducing the rate on casein, if evaporated and condensed milk were given the same rating as is at present applied to casein, than there is now for reducing the rating on casein because it takes the same rate as canned fruits, vegetables, and meats, which are all food products of value and have transportation characteristics similar to condensed and evaporated milk.

It might be noted that the carload rating on evaporated and condensed milk of fifth class at 36,000 pounds minimum, which is the rating sought by the complainants, would not be the same as the rating on casein, since the minimum applicable to the latter is 30,000 pounds.

The fact of the existence under the system of classification employed by the defendants of a milk group, which, however, does not appear to have been before the Commission during the consideration of the cited case, does not present such a changed condition as would justify or require a different conclusion from that heretofore reached.

Classification is a rate-making scheme devised for the purpose of according the same rate to all commodities of a like character from a transportation standpoint. The transportation characteristics to be considered in allocating or classifying any commodity have been announced from time to time in the decisions of this Commission. Some of these are bulk, weight, value, volume of tonnage accruing to the carrier from the commodity, risk, liability to damage, cost of carriage, care in handling, adaptability to movement in carload lots, controlling conditions caused by competition.

We see no reason for departing from the conclusions announced in the *Whiteland Case*, *supra*, or for holding that condensed or evaporated milk, a food product, should take a higher rate than other food products shipped under the same circumstances and of the same value.

It should be noted that under western classification condensed and evaporated milk take fourth class, less than carload, and fifth class, carloads, 36,000 pounds minimum, when packed in metal cans, boxed. And in southern classification the commodity in cans, boxed, takes third class, less than carload, and fifth class, 36,000 pounds minimum, in carloads.

From a consideration of all the circumstances herein presented the Commission is of opinion and finds that the present rates in official classification territory on condensed or evaporated milk (liquid) taking third class less than carload and fourth class when in carloads, as set forth herein, are and for the future will be unreasonable to the extent that they exceed the rates applicable under rule 26 on less-than-carload shipments, and the fifth-class rate with a 36,000-pound minimum in carloads.

REPARATION.

Complainants claim reparation on past shipments moving during the statutory period. From a finding that a rate at the present time is and for the future will be unreasonable, it does not necessarily follow
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low that such rate has been unreasonable in the past. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43; *Northwestern Woodenware Co. v. C., M. & P. S. Ry. Co.*, 28 I. C. C., 237, 243; *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154, 172; *Boldt Co. v. C., R. I. & P. Ry. Co.*, 27 I. C. C., 11, 13. In any case, therefore, where reparation is claimed because of an unreasonable rate, it is incumbent upon the Commission to enter upon a further consideration of whether or not the rate has in the past been unreasonable; and if so, to what extent and for what period.

The orders in the *Whiteland Case*, *supra*, ran against several of the carriers that are defendants herein, and put them on notice of the unreasonableness of any classification which placed a higher rating on condensed and evaporated milk, less than carload, in cans, boxed, than was applied to other canned food products of similar value and packing, and further set forth what the Commission deemed to be a reasonable rating.

It appears from letters filed in the record as exhibits to complainants' testimony that for a considerable period they have been in correspondence with the defendants, urging the reasonableness of their contentions, and that in the course of this correspondence the action of the Commission in the *Whiteland Case*, *supra*, has been actually brought to the attention of the defendants.

From a consideration of all the facts and circumstances presented in this record, the Commission is of opinion and finds that the complainants herein have been damaged and are entitled to reparation to the extent that they paid and bore a greater freight charge on less-than-carload shipments of condensed and evaporated milk in cans, boxed, moving since June 23, 1912, than would be assessable at the rate applicable under rule 26 of official classification. This case will be held open for the purpose of allowing the complainants herein to compile a statement setting forth the shipments on which reparation is payable hereunder, giving names of carriers, the date of shipment, point of origin and point of destination, weight, rate assessable hereunder, freight paid, and amount of reparation claimed with respect to each shipment. This statement, when verified by the defendants, may be filed with the Commission, when the entry of an order for reparation will be considered. An order will be entered in accordance with the findings herein.

DANIELS, *Commissioner*, concurring:

The findings in the report of the Commission as to the proper classification and ratings of condensed and evaporated milk have my approval. In the award of reparation upon less-than-carload shipments thereof and the theory upon which this reparation is based I do not concur.

In general, when a matter of appropriate classification is involved, and when upon a full hearing going to the merits thereof, a new classification with corresponding ratings is prescribed by the Commission, the rates required under such finding should, in my opinion, properly apply as a general rule for the future only; and reparation on past shipments should not ordinarily be accorded. Such has been the holding of the Commission in certain instances, where either a new classification basis or a general readjustment of rates has been established. Thus, in *National Asso. of Tanners v. L. V. R. R. Co.*, 35 I. C. C., 175, decided July 22, 1915, where essentially a matter of appropriate classification was involved, it is said at page 178:

Rates * * * for the future will be unreasonable to the extent that they exceed the sixth-class rates contemporaneously maintained from and to the same points. Reparation, however, is denied because only a revision of classification is involved and there is no proof of damage.

Where a new general readjustment of rates has been effected by the Commission's orders, the position has been repeatedly taken that reparation should not be accorded. Thus in *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.*, 27 I. C. C., at pages 167, 168, it is said:

In the *Connellsville Coke Producers Case*, *supra*, we have required a general readjustment of rates on coke. This establishes a new adjustment and new relationships as between consuming points. In other cases we have required new adjustments of rates on coal and on ore which will establish new relationships between iron-producing points. For these reasons as well as for the reasons hereinbefore mentioned, and the reasons announced in the *Warnock case*, *supra*, we are of the opinion that no reparation should be awarded in the instant case.

In the instant case where rule 26 is found the appropriate rating for this commodity in less than carloads, it is proposed to award reparation on shipments moving since June 23, 1912, which is two years prior to the date of the filing of the present complaint in which request for reparation is made. The reason, as would appear from the Commission's decision, for awarding reparation in this case is that the orders in an earlier case, *Whiteland Canning Co. v. P., C., C. & St. L. Ry. Co.*, 22 I. C. C., 261, decided March 1, 1912—

ran against several of the carriers that are defendants herein, and put them on notice of the unreasonableness of any classification which placed a higher rating on condensed and evaporated milk, less than carloads, in cans, boxed, than was applied to other canned food products of similar value and packing, and further set forth what the Commission deemed to be a reasonable rating.

In the *Whiteland Case*, *supra*, the carriers made defendant to the complaint were: Pittsburgh, Cincinnati, Chicago & St. Louis Rail-

way; Cleveland, Akron & Cincinnati Railway; Cincinnati, Lebanon & Northern Railway; Pennsylvania Terminal Railway Company; the Pittsburgh, Chartiers & Youghiogheny Railway; and Pittsburgh & Lake Erie Railroad, while in the instant case there are 55 defendants, only two of which were parties in the *Whiteland Case*. It would seem that it could hardly be maintained that all these defendants were put upon notice that their rating was unreasonable because it did not conform to the rating of six carriers generally operating in another region.

From the record in the original *Whiteland Case*, where only less-than-carload shipments were involved, it appears that from the inception of official classification in 1887, condensed milk less than carloads was rated third class therein. In 1909 certain manufacturers called the attention of the carriers in central freight association territory to the fact that special less-than-carload rates were accorded in trunk line territory—20 per cent less than third class—upon evaporated milk, which is a newer product and is carried at the same rates as condensed milk. Thereupon, in November, 1909, exceptions were issued to central freight association classification, and evaporated milk rates were put upon a parity with those in trunk line territory, likewise reducing them 20 per cent below third class. In the spring of 1911 the trunk line carriers withdrew their special rates, restoring evaporated and condensed milk to third class, and on discovering this, the defendant carriers also restored the less-than-carload rates in central freight association territory to third class.

Since the increased rates took effect after the amendment of 1910, the burden to justify them was upon the defendants. The Commission held that the carriers had put in no sufficient evidence showing the increased rates just and reasonable, and at pages 262 and 263 said:

We do not feel that the defendants in this case have sustained that burden of proof. No material evidence was introduced by them tending to show that the present increased rate is just and reasonable. What little evidence is found in the record bearing upon that point was introduced by the complainant, and tends to show that the present rates are unreasonable, since they are more than rates applied to other commodities shipped under the same circumstances and of the same value.

The finding, therefore, was not in substance that the third-class rates proposed to be restored were unreasonable, but that the carriers had produced no evidence to justify the increased rates. No reparation was asked for or allowed by the Commission in the case, and the issue therein is stated in the report to concern the reasonableness of the rates then effective, less than carload, "in what is known as central freight association territory as served by certain specified carriers." After the decision in the original case the following

carriers, not named as defendants, filed petitions for reopening, rehearing, or leave to intervene in event the proceeding were reopened: Boston & Albany Railroad; the Baltimore & Ohio Railroad Company; the Baltimore & Ohio Southwestern Railroad Company; Cincinnati, Hamilton & Dayton Railway Company; Boston & Maine Railroad; and Maine Central Railroad Company, some of these carriers alleging that they had no notice, direct or indirect, of the proceeding; that third class was a reasonable rating, and that a reduction would affect rates upon other commodities. All of the defendants filed petitions for rehearing, alleging that they desired to introduce additional evidence.

The report of the Commission denying these petitions said that the fact that petitioners might be compelled by competition to carry the reduced rates was no ground for rehearing, and on page 93 remarked:

It would be unjust to the complainant to strike off the order made and open this case for further proceedings upon the grounds that some other line not a defendant may be indirectly affected by that order.

It is not apparent why, in the event the matter was reopened, the Commission would have had to strike off the order pending decision therein. Nothing in the act to regulate commerce so requires, and the Commission has more than once reopened a case for rehearing, leaving the original order to stand effective.

The complaint in the instant case was filed June 23, 1914, and, as above indicated, made 55 carriers parties defendant. The proposed report finds the less-than-carload rates on condensed milk, as described, unreasonable, to the extent that they exceed rule 26, 20 per cent less than third class, and grants reparation as previously indicated. Even if it be conceded that the 55 defendants in the instant case had constructive notice from the *Whiteland Case, supra*, as to what was a reasonable rate in the territory affected, the substantially negative nature of the finding might well have suggested doubt whether upon further hearing and broader evidence going to the merits of the matter, they could not justify in other parts of official classification territory a third-class rating.

If in instances where a classification rating or a particular rate related to the established classification is condemned in one part of official classification territory, carriers generally throughout that territory are put on notice that their rates in excess of those approved are unreasonable, and that, when attacked, reparation will be accorded on the basis of the rates found reasonable in one part of the territory, an embarrassing precedent will have been established, and the doctrine of constructive notice pushed to an unwarranted limit. Especially would this seem the case when it is well known

that the same article often moves under different ratings in different parts of the same classification territory. Recent examples of this are of record as regards paper and packing-house products. In New England the finer grades of writing paper have moved until recently in many instances under fifth-class rates, when the same commodity in trunk line territory was contemporaneously carried at or below sixth class. Packing-house products in the eastern part of central freight association territory move in carloads, under fifth-class rates, and in the western part of central freight association territory move at rates less than fifth class. Moreover, special commodity rates applicable to one part of official classification territory and not to another are numerous.

In short, the instant case is the first occasion when the appropriate classification of this commodity has been heard upon the essential merits of the milk group ratings defended by the carriers as against the complainant's contention that condensed and evaporated milk should in classification be assimilated to analogous articles of food similar in value, packing, and in other transportation characteristics. It would therefore be fitting in my judgment to establish the new classification with its ratings for the future, and in virtue of the new classification now for the first time approved upon its essential merits to decline an award of reparation on past shipments.

HALL, *Commissioner*, dissents.

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No. 7248.
LA CROSSE SHIPPERS' ASSOCIATION ET AL.
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted March 23, 1915. Decided March 14, 1916.

Upon complaint that the interstate class rates from La Crosse, Wis., to points in the southern half of Minnesota are unreasonable and unduly discriminatory, *Held:*

1. Such of the rates complained of as have been increased since January 1, 1910, justified.
2. Rates complained of which have not been increased since January 1, 1910, not shown to be unreasonable.
3. The record shows no sufficient reason for the establishment of proportional rates from La Crosse to St. Paul, Minneapolis, or Minnesota Transfer, Minn.
4. Record not sufficient for final determination upon the issue of unjust discrimination, but held open to permit subsequent hearing thereon.

G. M. Stephen for complainants.

R. H. Widdicombe, C. C. Wright, J. P. Sheean, R. B. Scott, O. W. Dynes, and *J. N. Davis* for defendants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

Associations of shippers, manufacturers, and jobbers at La Crosse, Wis., attack as unreasonable, unjustly discriminatory, and unduly prejudicial the class rates from La Crosse, Wis., to various points in Minnesota on and south of the line of the Chicago, Milwaukee & St. Paul Railway from St. Paul to Big Stone City and Wheaton, Minn. They ask that rates be established which, except when reasonably grouped, shall be on the basis of the mileage scale prescribed by Minnesota for intrastate application. Some of the rates prayed for are based on a grouping of La Crosse with St. Paul and Winona, Minn. Proportional rates are asked to St. Paul, Minneapolis, and Minnesota Transfer. Reparation is prayed on shipments moving within two years prior to filing the complaint.

La Crosse, Wis., is on the east bank of the Mississippi River, 263 miles northwest of Chicago, Ill., 197 miles west of Milwaukee, Wis.,

and 128 miles south of St. Paul and has approximately 30,000 inhabitants. It is served by the Chicago, Milwaukee, & St. Paul Railway Company, hereinafter called the Milwaukee; the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington; and the Chicago & North Western Railway Company, hereinafter called the North Western. These roads with the Chicago, St. Paul, Minneapolis & Omaha Railway Company, hereinafter called the Omaha, are the sole defendants herein. The complainants ask that the Omaha and North Western be treated as one line for the purpose of prescribing rates. The rates herein quoted are in cents per 100 pounds. Their history, using for convenience the first class only, is illustrated by the following tables:

First-class rates from La Crosse, Wis., to points in Minnesota.

ON THE MILWAUKEE IN 1902, 1907, 1911, 1913, AND 1914.

To—	1902	1907 ¹	1911	1913	1914
Ramsey.....	37.0	30.6	37.0	36.5	36.5
Albert Lea.....	33.0	31.6	33.0	40.4	40.4
Fairmont.....	44.0	38.5	44.0	51.2	51.2
St. Paul.....	40.0	36.5	40.0	31.6	40.0
Glaceaux.....	58.0	48.3	58.0	42.4	58.0

ON THE NORTH WESTERN IN 1908, 1911, AND 1914.

To—	1908 ¹	1911	1914
Stockton.....	24.0	24.0	21.0
Owatonna.....	32.6	36.0	35.5
Mankato.....	32.6	36.0	44.3
Sleepy Eye.....	34.5	39.0	51.2
Marshall.....	41.4	51.0	57.1
Burr.....	52.2	61.0	60.0
Verdi.....	52.2	60.0	60.0

ON THE OMAHA IN 1908, 1911, AND 1914.

To—	1908 ¹	1911	1914
Mendota.....	53.8	53.8	55.1
Lake Crystal.....	35.5	40.0	45.3
Madelia.....	36.5	41.0	48.3
Bingham Lake.....	39.4	44.0	53.2
Currie.....	45.3	54.0	57.1
Worthington.....	46.3	55.0	55.0

¹ The rates of 1907 and 1908 are practically upon the same basis, those different years being used by complainants because of the difference in the dates of the tariffs of defendants.

The following table introduced by the complainants shows the former and the present relationship of the rates via the Milwaukee from La Crosse, and from Winona and St. Paul:

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Present rates as compared with those in effect in 1902.

	1902	1915		1902	1915
Lanesboro from—			Kimbrae from—		
St. Paul.....	40.0	41.4	St. Paul.....	50.0	52.2
Winona.....	34.0	25.7	Winona.....	50.0	57.1
La Crosse.....	30.0	25.7	La Crosse.....	50.0	57.1
Grand Meadow from—			Blooming Prairie from—		
St. Paul.....	39.0	34.5	St. Paul.....	36.0	27.7
Winona.....	38.0	32.6	Winona.....	45.0	38.5
La Crosse.....	32.0	32.6	La Crosse.....	40.0	38.5
Mabel from—			Faribault from—		
St. Paul.....	50.0	46.3	St. Paul.....	30.0	21.8
Winona.....	31.0	25.7	Winona.....	38.0	33.6
La Crosse.....	28.0	25.7	La Crosse.....	45.0	45.0
Lyle from—			Northfield from—		
St. Paul.....	38.0	33.6	St. Paul.....	28.0	18.9
Winona.....	38.0	39.4	Winona.....	37.0	30.6
La Crosse.....	38.0	39.4	La Crosse.....	42.0	42.0
Leroy from—			Zumbrota from—		
St. Paul.....	42.0	36.5	St. Paul.....	42.0	28.7
Winona.....	45.0	42.4	Winona.....	35.0	26.7
La Crosse.....	42.0	42.4	La Crosse.....	36.0	36.0
Ramsey from—			Frontenac from—		
St. Paul.....	37.0	30.6	St. Paul.....	31.0	21.8
Winona.....	38.0	34.5	Winona.....	31.0	21.8
La Crosse.....	37.0	30.5	La Crosse.....	35.0	35.0
Armstrong from—			Chaska from—		
St. Paul.....	39.0	35.5	St. Paul.....	22.0	20.8
Winona.....	39.0	41.4	Winona.....	41.0	36.5
La Crosse.....	39.0	41.4	La Crosse.....	48.0	53.2
Sherburne from—					
St. Paul.....	44.0	46.3			
Winona.....	44.0	53.2			
La Crosse.....	44.0	53.2			

From the foregoing tables it will be seen that the rates complained of are usually near the basis of the rates of 1902. By order of the Railroad Commission of Minnesota rates in that state were reduced in 1907, and because of the reductions certain related interstate rates were reduced. Injunctions issued against the maintenance of these lower intrastate rates were, except as to one road, set aside on appeal to the Supreme Court. *Simpson v. Shepard*, 230 U. S., 352. Following the dissolution of this injunction the complainants' rates were somewhat increased, but the grouping of La Crosse with Winona and St. Paul on all traffic west of Mankato, Minn., was continued. A statute of Minnesota prescribed mileage rates within that state. When this law became effective—January 1, 1914—the defendant carriers discontinued their former method of grouping La Crosse with Winona and St. Paul and increased their rates from La Crosse to the general basis of 1902. That an increase is made over a rate reduced because of conditions produced by the act of a state and that the increased rate is but a restoration of former rates are circumstances to be considered in determining whether or not carriers have met the burden of justifying rates increased since January 1, 1910. *Corporation Commission of Oklahoma v. A., T. & S. F. Ry.*, 31 I. C. C., 532, 536. It is not, however, in itself a justification of increased rates that they are a consequence of a readjust-

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ment of intrastate rates. *Rates on Beer and Other Malt Products*, 81 I. C. C., 544.

In support of the rates complained of, the defendants show that this Commission in *Minneapolis Civic & Commerce Asso. v. C. & St. P. Ry.*, 30 I. C. C., 663, prescribed a mileage scale for the making of rates from Minneapolis and St. Paul, Minn., to points in North Dakota and South Dakota, which was an extension of a scale theretofore applied by the carriers, and which will be hereinafter referred to as the St. Paul-Dakota scale; that from this there resulted rates, averaging for distances of 200 to 300 miles, which were 18 per cent higher than the rates complained of; that in *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193, 563, there was prescribed a mileage scale from Iowa points to points in northern Kansas and Nebraska, hereinafter referred to as the Iowa scale, the rates under which average, for distances of 40 to 300 miles, 31 per cent higher than the rates complained of; that rates under the Missouri intrastate distance tariff for distances of 40 to 300 miles average 20 per cent higher than the rates involved in this proceeding; that rates to selected points west from Chicago, Milwaukee, and St. Louis for distances of 80 to 300 miles average 7 per cent higher than the rates of complainants; that the interstate distance tariff in Illinois for distances of 40 to 140 miles averages 5 per cent higher than the rates here in issue, and that the rates are higher in many instances from La Crosse and St. Paul and Winona to points in Wisconsin for comparable distances than are the rates involved in this proceeding.

The defendants refer to rates established by this Commission from Duluth to St. Paul and Minneapolis, called the twin cities, in *Freight Rates from Minnesota Points*, 32 I. C. C., 361, 364, 365, where it was said:

Upon the whole we think the proposed class rates find ample justification in the record.

The following table shows the rates there approved and the rates from La Crosse to the twin cities here involved:

Class	1	2	3	4	5	A	B	C	D	E
From Duluth	41.4	34.5	27.6	20.7	16.6	18.6	14.5	12.4	10.3	8.3
From La Crosse	40	36	28	20	13.4	16	14	12	10	8

Of these rates from La Crosse, the only increase made since 1910 was in the fifth class, which was increased from 12.5 cents, and the present rate on this class is the only rate to St. Paul and Minneapolis which is claimed to be unlawful. The average distance from Duluth is 155 miles, from La Crosse 137 miles, making the Duluth-twin cities distance 13 per cent greater than the La Crosse-twin cities distance, while the sum of the Duluth-twin cities rates is 3.8 per cent greater

than the sum of the La Crosse-twin cities rates. The fifth-class rate from Duluth is 24 per cent higher than the present fifth-class rate from La Crosse. In view of the fact that there are two terminal services necessary in each case, and that the only class rate between La Crosse and the twin cities with respect to the reasonableness of which the carriers are called upon to sustain the burden of proof is less by a considerable percentage than the same class rate that this Commission has found to be reasonable for the longer distance from Duluth to the twin cities, the comparison tends strongly to support the contention of the defendants.

The complainants urge that the density of traffic and population is somewhat higher in the territory under discussion than in North Dakota, South Dakota, or Nebraska, but the defendants insist that the fact that the St. Paul-Dakota and the Iowa scale rates are so much higher than the rates attacked is proof of the reasonableness of the latter. The complainants also urged that the rates from Chicago, Milwaukee, and St. Louis to points in Wisconsin were group rates, and that the Illinois interstate scale applies to a smaller number of commodities than do the class rates complained of, on account of the exceptions to the classification and the more numerous commodity rates under the Illinois scale.

In *Rates on Agricultural Implements*, 36 I. C. C., 151, certain increases therein proposed were condemned. But the increases which were sought in that case varied from 30 to 100 per cent, and we remarked in our report therein that some readjustment of existing rates might be proper upon a more adequate record.

The complainants also show that the rates in issue are higher than the Minnesota or Iowa intrastate scales, and higher per mile than certain rates from Dubuque, Iowa, and Chicago into Minnesota. They ask that rates be established generally on the basis of the Minnesota state rates, employing the distances in some instances from Winona or St. Paul rather than from La Crosse when the distance from La Crosse is greater. Rates from Chicago and Dubuque to southern Minnesota points are held down by the Chicago-St. Paul rates, which themselves are made with relation to the rates from Duluth, Minn., and Superior, Wis., to St. Paul. The Chicago Great Western Railroad Company and the Illinois Central Railroad Company, not parties to this case, reach the southern Minnesota points from Dubuque by shorter lines than the routes of some of the defendants from Dubuque to the same points. Under these circumstances a comparison of the Chicago and Dubuque rates with the complainants' rates are of less evidential value.

Should the rates prayed for in the complaint be found reasonable and become effective, discrimination against Minnesota stations immediately across the state line from La Crosse would be created.

Some of the present rates from La Crosse to Kinbrae, Fulda, Wirock, Iona Lake, Chandler, and Edgerton, Minn., on the Milwaukee, are shown to be slightly higher than to Sioux Falls, S. Dak., and it is asked that the Sioux Falls rates be established. No departure from the fourth section was alleged, and it appears that the present route from La Crosse to Sioux Falls is not via the lines through these towns.

The principal evidence presented by the complainants to establish their allegation of unreasonableness consists in comparisons with rates prescribed by states or directly reflecting the influence of such rates. Such comparisons, though they have evidential value, are not conclusive. *Marshall Oil Co. v. C. & N. W. Ry. Co.*, 14 I. C. C., 210, 218; *Trier v. C., St. P., M. & O. Ry. Co.*, 30 I. C. C., 352, 355.

We are of the opinion and find that the rates complained of have not been shown to be unreasonable and that the rates increased since January 1, 1910, have been shown to be just and reasonable.

The complainants show that they are in competition with Winona, St. Paul, Dubuque, and Chicago, and that a disadvantage results in some degree from the fact that their rates inbound added to the rates outbound to the points where goods are sold exceed the aggregate of the in and out rates of their competitors. The inbound rates to La Crosse from Chicago and Dubuque are not in issue in this proceeding. Tables comparing the relationship between these aggregates of inbound and outbound rates were offered by the complainants, but the fact that one market has higher rates inbound than its competitor is not a justification for rates outbound which are less than just and reasonable. In *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, 163, the Commission had for consideration a contention similar to that here presented, and it was there held:

We have been urged by certain of the parties in interest to this proceeding to so adjust these rates that the combined in and out transportation charges at the different localities would be equal. This basis of adjustment can not be accepted. These packing houses have been voluntarily located at the points where they are. If in fact that location is such that the haul upon the live animal is longer in one case, while the haul upon the manufactured product is no less, then that packing house rests upon a natural disability which ought not to be equalized in the rate.

While commercial and industrial conditions often enter into the determination of a reasonable transportation charge, it is no part of our duty to so adjust rates that business will or will not be done at a particular point, and that is especially true of a case like this, where no natural advantage is possessed by any locality.

The prayer for proportional rates is based mainly upon argument which would establish a conclusion from the general relationship of rates. This record is insufficient to support such conclusion. In *Indianapolis Freight Bureau v. C., C. & St. L. Ry.*, 23 I. C. C., 195, 204, in discussing a similar contention, the Commission said:

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If Indianapolis is entitled to an adjustment of rates under which it can merchandise and reship goods brought from the Atlantic seaboard on exactly the same basis as Chicago, all other intermediate cities are entitled to equal combinations—an adjustment that is impossible except under a uniform classification, and probably impossible then on account of the competition between carriers which serve certain points and territories and do not serve certain other points and territories in which the goods and the dealers compete with each other.

Save from Dubuque and Winona, the conditions surrounding the transportation from Winona, La Crosse, Dubuque, Sioux Falls, and Chicago to St. Paul and other points in Minnesota are dissimilar; nor does the fact that the revenue per ton-mile for these longer distances is less than is yielded by the rates from La Crosse of itself warrant the relief asked in the instant case. The rates from Dubuque are influenced by the Chicago-St. Paul rates, and are also made to meet the competition of lines not parties hereto or serving La Crosse; and if a reasonable deduction for terminal costs be made and only the line haul be considered, the rates from Dubuque and Sioux Falls and from La Crosse are not shown to be out of line. Rates from Winona and from La Crosse to St. Paul yield practically the same revenue per ton-mile. Rates from La Crosse to points in Minnesota are on a lower basis, distance considered, than rates cited from Winona eastward to points in Wisconsin.

The complainants pointed out that their rates to St. Paul are higher than the rates for a longer distance from Minneapolis to Lake Nebagamon in Wisconsin. However, since the hearing, by tariff effective February 15, 1915, these rates from Minneapolis were increased and are now higher than the rate from La Crosse to St. Paul.

A few rates from La Crosse are higher than rates under the St. Paul-Dakota scale. This results from the fact that the St. Paul-Dakota scale makes groups of 20 miles in width and that the La Crosse rates are not made strictly on a mileage basis. Such exceptions do not change the fact hereinbefore referred to that generally the St. Paul-Dakota scale is on a higher basis than the La Crosse rates.

The issue of discrimination which is presented by the record demands careful analysis. If the rate structure which is required to be maintained by the existing Minnesota statute results in subjecting any particular interstate shipper or any interstate locality, or any description of interstate traffic to any undue or unreasonable prejudice or disadvantage, the circumstances and conditions being substantially similar in the case of both interstate and intrastate movement, the situation will be similar to that which was determined by the Supreme Court in the *Shreveport Case*, 234 U. S., 342. If a clear case of unjust discrimination is shown upon the record, it is our duty to make an order requiring the removal of the discrimination, and

since we find herein that generally the existing interstate rates are reasonable, the order requiring the removal of the discrimination would justify the defendants in raising their Minnesota intrastate rates herein involved to the basis of the interstate rates. Obviously such an order should be made only upon a record which convincingly and specifically establishes unjust discrimination. Regard must also be had to the fact that an interstate mileage scale applied alike to branch lines and main lines within the state affords a revenue basis different from a rate fabric based on main-line hauls only.

The petition alleges that the existing rates from La Crosse to southern Minnesota destinations are unjustly discriminatory, and that on account thereof the petitioners "have been and are subjected to great disadvantages in marketing their goods and carrying on their business," and after having set forth all the grounds of complaint, the petition finally alleges "that respondents have been and are subjecting petitioners and their traffic to unjust discriminations and undue and unreasonable prejudices and disadvantages."

That the rates intrastate in Minnesota are in certain instances lower per mile and are based on a mileage scale constitutes the principal reason for alleging such discrimination. As rates in Minnesota are on a mileage basis and rates from La Crosse into Minnesota are affected by competition, are in some instances grouped, and are not based alone on mileage, it results that the relationship between these two sets of rates is not uniform. Mileage alone considered, La Crosse in some cases pays rates higher than its competitors which enjoy the use of the Minnesota state rates, although in instances La Crosse has as low rates as would result were the Minnesota scale applied to its distances. The table below illustrates these facts:

Rates from La Crosse to Minnesota points and rates under the Minnesota scale for similar distances.

	Distance.	1	2	3	4
	Miles.	Cents.	Cents.	Cents.	Cents.
To Lewiston from La Crosse.....	52	21.8	18.2	15.0	12.0
Minnesota scale.....	80	20.8	17.3	13.9	10.4
To Hayward from La Crosse.....	121	39.4	32.9	26.3	19.7
Minnesota scale.....	126	35.5	29.6	23.7	17.8
To Wells from La Crosse.....	147	44.3	36.9	29.6	22.3
To Lonsdale from La Crosse.....	148	50.0	42.0	33.0	25.0
To Janesville from La Crosse.....	148	40.4	33.7	26.9	20.3
Minnesota scale.....	160	46.4	35.7	28.9	22.3
To St. Peter from La Crosse.....	172	45.3	37.8	30.2	22.7
To Huntley from La Crosse.....	174	49.2	41.0	32.8	24.0
To Pettis from La Crosse.....	175	56.0	47.0	37.0	27.0
Minnesota scale.....	175	45.3	37.8	30.2	22.7
To Sherburn from La Crosse.....	200	53.2	44.3	34.0	25.0
To Essig from La Crosse.....	201	51.2	42.7	34.1	24.6
To Stewart from La Crosse.....	203	60.0	50.0	39.0	27.0
Minnesota scale.....	200	50.2	41.8	33.5	25.1
To Winrock from La Crosse.....	254	58.1	48.4	38.7	29.0
To Granite Falls from La Crosse.....	255	68.0	58.0	46.0	32.0
Minnesota scale.....	250	55.1	45.9	36.7	27.4
To Pipestone from La Crosse.....	292	68.0	51.6	41.3	31.0
Minnesota scale.....	300	60.0	50.0	40.0	30.0

It was brought out at the hearing that Chicago, Dubuque, Milwaukee, the twin cities, and Winona were the points as to which discrimination was claimed, and by far the most emphasis was laid upon the discrimination in favor of Chicago. Serious complaint also developed against the present grouping of La Crosse, Winona, and the twin cities in connection with through rates from Pittsburgh and the east. Other important complaints developed respecting Dubuque.

Inasmuch as the parties which would be affected by a readjustment of Chicago, Dubuque, and eastern rates are not before us in this proceeding, it is clear that no disposition can be made on this record with respect to rates involving these points. The issue must be largely confined to the particular complaints, which were developed at the hearing, as to discrimination against La Crosse in favor of Winona and the twin cities. It was developed at the hearing that the principal cause of complaint against Winona is the fact that to destinations on the Milwaukee from which Winona is more remote it receives the same rates as La Crosse, while to destinations to which Winona is nearer it enjoys a lower rate than La Crosse, and this general situation is supported by the record. In many instances, however, this condition has arisen on account of competition at these points with carriers which are not parties to this proceeding. The record is not full enough to enable us to determine at what points, if any, unjust discrimination exists, or to make any general finding of unjust discrimination as between Winona and La Crosse. It further appears from the preponderance of the evidence that La Crosse does not regard the competition of Winona as serious. The record furnishes no specific instance where the situation has worked an injury to the La Crosse shipper. The evidence taken as a whole shows that so far as Minnesota is concerned the principal competition comes from the twin cities.

The issue of discrimination is narrowed to the inquiry whether the evidence of record will support a finding that the rates from St. Paul to southern Minnesota points show an undue and unreasonable preference of that locality as against La Crosse. The first witness offered by complainant to prove discrimination could recall no particular instances where he had been materially injured nor the freight rate he used to any given point in Minnesota; his principal complaint is with respect to a difference of from 15 to 25 cents in the freight rate on overalls destined to points beyond St. Paul, where he has to absorb the freight rate from La Crosse to St. Paul.

The second witness, a manufacturer of rubber shoes, could not state any point at which discrimination existed against his product; he knew neither the rate on his product to any given Minnesota point, nor whether a class or commodity rate was applicable; and

could give no instance where the change in the freight rate which is the basis of this complaint has diminished his profits.

The third witness, an iron and steel manufacturer and jobber, sells his goods in southern Minnesota and complains because he can not meet the competition of Milwaukee and Chicago. The fourth witness, a wholesale grocer, complains that he had been "practically shut out" from "some territories." The principal instance of a commodity upon which he had been deprived of the traffic is sugar, but he subsequently admits that sugar is sold upon the Chicago basis.

The last witness, a dealer in sash, doors, and blinds, states that he formerly sold goods in southern Minnesota, meeting competition from Dubuque, and that his principal competition is west of Minneapolis. After the present rate went into effect he "discontinued some territory," because the difference in freight rate was too great, and he mentions Ortonville as one point which he abandoned. He made no other or more specific statement of damage. Several of the witnesses claimed that the discontinuance of their sale of one line of goods often caused the loss of a much larger order on account of the tendency of their customers to lump their orders, and not being able to obtain satisfactory figures on one item, they would not consider the purchase of others.

Upon evidence such as that which has just been recited, the complainant relies to establish undue preference of other localities to the prejudice of La Crosse. The evidence at best is inconclusive, and if we consider the difference in general traffic conditions existing at La Crosse in comparison with conditions at the twin cities, with more than half a million inhabitants and with their through lines of railway traversing southern Minnesota to the markets to the south and southwest at Des Moines, Sioux City, Omaha, St. Joseph, Kansas City, and St. Louis, we are forced to the conclusion that upon this record, certainly, we can not find that the present rates complained of in the section of southern Minnesota are unjustly discriminatory or unduly prejudicial as against La Crosse in favor of the twin cities. The instances of discrimination to which our attention has been called have generally involved comparatively slight differences in rates or have been complained of chiefly in connection with points to which the movement of traffic can not be of great volume; but we are not to be understood from this as holding that unjust discrimination, because affecting unimportant shipping centers or a small volume of traffic, has been a determinative factor in reaching our conclusion. What we do mean is that apart from the fact that the degree of discrimination shown is not great, the evidence of record is of such a character as to make it impossible for us to determine in any

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particular instance that the situation with respect to which complaint was made was not due to circumstances quite outside of the complaint, namely, the low inbound rate into La Crosse, the grouping of La Crosse with the twin cities with respect to eastern hauls, and the low rates from Chicago and Dubuque to southern Minnesota destinations, rather than to the existing outbound rates from La Crosse.

The prohibition of the statute against discrimination which is unjust confers the right to exercise a reasonable judgment as to whether such discrimination is within the inhibitory clause; and we should not lightly, nor upon grounds which do not seem convincing, find that rate differences which may be capable of explanation or defense upon a complete record are tantamount to undue discrimination, especially where such finding would result in what may be an unnecessary disruption of a rate fabric established for intrastate traffic. We ought not, however, to foreclose this issue, and we shall hold the record open for a reasonable time in which the parties may on proper showing be entitled to further hearing thereon, and wherein upon supplemental petition, if filed, the issue of alleged unjust discrimination against La Crosse may be more adequately tried.

The complaint is hereby dismissed only upon the issue of the reasonableness of the rates involved. The record will be kept open for 60 days from the date of the decision herein, in order to afford opportunity to the parties hereto to present a supplemental petition upon the issue of unjust discrimination.

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No. 7157.
J. W. WELLS LUMBER COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted June 5, 1915. Decided March 14, 1916.

Complainant seeks reparation because it was required to pay what is alleged to be an unreasonable and unjustly discriminatory rate for shipments of logs from points on the Superior division of the defendant to Menominee, Mich.; *Held*, That the evidence fails to show that the rates charged were unreasonable or that complainant was damaged by reason of the alleged discrimination. Complaint dismissed.

Cassoday, Butler, Lamb & Foster and C. R. Hillyer for complainant.

O. W. Dynes and J. N. Davis for defendant.

REPORT OF THE COMMISSION.

McCHORD, *Chairman*:

Complainant is a corporation engaged in the manufacture of lumber at Menominee, Mich. In its complaint, filed August 3, 1914, it is alleged that 3 cents per 100 pounds paid by it for the transportation of logs in carloads from Spur 320, Wasas Siding, Hubbell's Mills, and Pori, Mich., on a line of the defendant in the state of Michigan, moving interstate through Wisconsin to Menominee, was unreasonable, unjustly discriminatory, and in violation of the fourth section of the act. Reparation is asked.

During the years 1910, 1911, 1912, 1913, and 1914 complainant shipped numerous carloads of logs from Spur 320, Hubbell's Mills, Wasas Siding, and Pori to Menominee. Spur 320 is about 3 miles south and east of Ontonagon, Mich., on the Superior division of defendant's line. The distance from Ontonagon to Menominee is 182 miles. Hubbell's Mills, Wasas Siding, and Pori are on the same division, from about 15 to 20 miles south of Spur 320. Complainant was charged 3 cents per 100 pounds on shipments from all the points named. Based on an estimated weight of 1,500 pounds per 1,000 feet, 3 cents per 100 pounds made the charge the equivalent of \$4.50 per 1,000 feet. The rate of 3 cents was in accordance with defendant's mileage scale. Spur 320 was not named in the published list of stations from and to which the mileage scale of rates were ap-

plicable. It would thus appear that the rate of 3 cents had not been lawfully established from that point. There is no dispute, however, that 3 cents was the proper rate in accordance with the mileage scale for the distance from Spur 320 to Menominee. Spur 320 has been abandoned as a shipping point for nearly three years, and no future rates are sought.

At the time complainant made the shipments in question there were in effect from more distant points on the same line rates to Menominee, Mich., and Marinette, Wis., of \$3.25 and to Green Bay, Wis., of \$3 per 1,000 feet, limited to shipments of 20 carloads or more. In July, 1913, complainant had shipped all the timber owned by it from Spur 320 and notified the defendant to that effect and began shipping from Wasas Siding, Hubbell's Mills, and Pori. All shipments made prior to July 1, 1914, paid rates of 3 cents per 100 pounds. On that date rates from Hubbell's Mills and Wasas Siding were established by the defendant on the same basis as from the more distant points, and Pori was provided for by application of rates to intermediate points, thus removing any possible violation of the fourth section. The only question presented by the record is, therefore, that with respect to reparation. There is no evidence in the record upon which we may predicate a finding that the rates involved were or are unreasonable. The evidence bearing upon the reasonableness of the rates charged is confined to the reference made to the lower rates charged on lots of 20 carloads or more to Menominee, Marinette, and Green Bay. This, however, does not prove unreasonable the higher rates on carload lots paid by complainant.

The Commission has repeatedly held that the mere fact that certain traffic is hauled in trainload lots can not be made the basis of rates different from those applied to shipments in single carloads. This is upon the theory that to permit the practice would be in effect to allow lower rates upon a condition which only a few shippers can comply with and to do an injustice to those unable to ship the required quantity. *Woodward-Bennett Co. v. S. P., L. A. & S. L. R. R. Co.*, 29 I. C. C., 664; *Richards v. A. C. L. R. R. Co.*, 23 I. C. C., 239; *Anaconda Copper Mining Co. v. C. & E. R. R. Co.*, 19 I. C. C., 592; *Carstens Packing Co. v. O. S. L. R. R. Co.*, 17 I. C. C., 324; *Planters Compress Co. v. C., C. & St. L. Ry. Co.*, 11 I. C. C., 382. Defendant should immediately discontinue publishing lower rates on shipments in lots of more than one carload than on carload shipments.

Complainant contends that because of the lower rate per 1,000 feet from more distant points the fourth section of the act was violated and that it is entitled to reparation because it was required to pay an unlawful rate. In this connection it is to be remembered

that the lower rate from the more distant point was predicated on shipments of 20 carloads or more at a time; and that there was no violation of the fourth section with respect to shipments in any number of cars less than the specified number.

There remains for consideration the allegation that complainant was damaged because the rates charged were unjustly discriminatory. In conformity with our previous holdings with regard to lower rates on shipments of more than one carload, we find that in so far as complainant's competitors at Menominee, Marinette, and Green Bay were accorded lower rates on logs shipped in 20-carload lots than were contemporaneously charged complainant, they were unduly preferred and complainant was unjustly discriminated against. Complainant has, however, failed to prove that it was damaged thereby. Complainant's witness testified that he did not know the grade of lumber or kind of lumber manufactured from the logs in question; did not know to what points the product was shipped, or to whom it was sold or for what price; that the logs were not kept separated from logs shipped from other points where a lower rate was paid; admitted that its competitor in some instances paid a higher rate on its shipments than did the complainant. Furthermore, complainant's witness testified that he knew that some of complainant's competitors' traffic did not move in 20-carload lots. The only evidence offered to prove damages consisted of general statements to the effect that the margin of profit on lumber was very small and that complainant has found it necessary to shrink its profits by the amount that its freight rates exceeded the rates paid by its competitors. We are unable to base a finding of damages on such general allegations, and an order will therefore be entered dismissing the complaint.

38 I. C. C.

No. 8186.
JOHN L. SCOTT
v.
CAPE CHARLES RAILROAD COMPANY ET AL.

Submitted January 6, 1916. Decided March 20, 1916.

Rates on potatoes in carloads from points in Virginia on the Cape Charles Railroad to Philadelphia, Pa., and New York, N. Y., shown to be unreasonable and unjustly discriminatory to the extent that they exceed the rates contemporaneously in effect from Cape Charles, Va., by more than 4 cents per standard barrel. Reparation denied.

N. B. Wescott, J. E. Heath, and C. J. Collins for complainant.
F. L. Ballard for defendants.

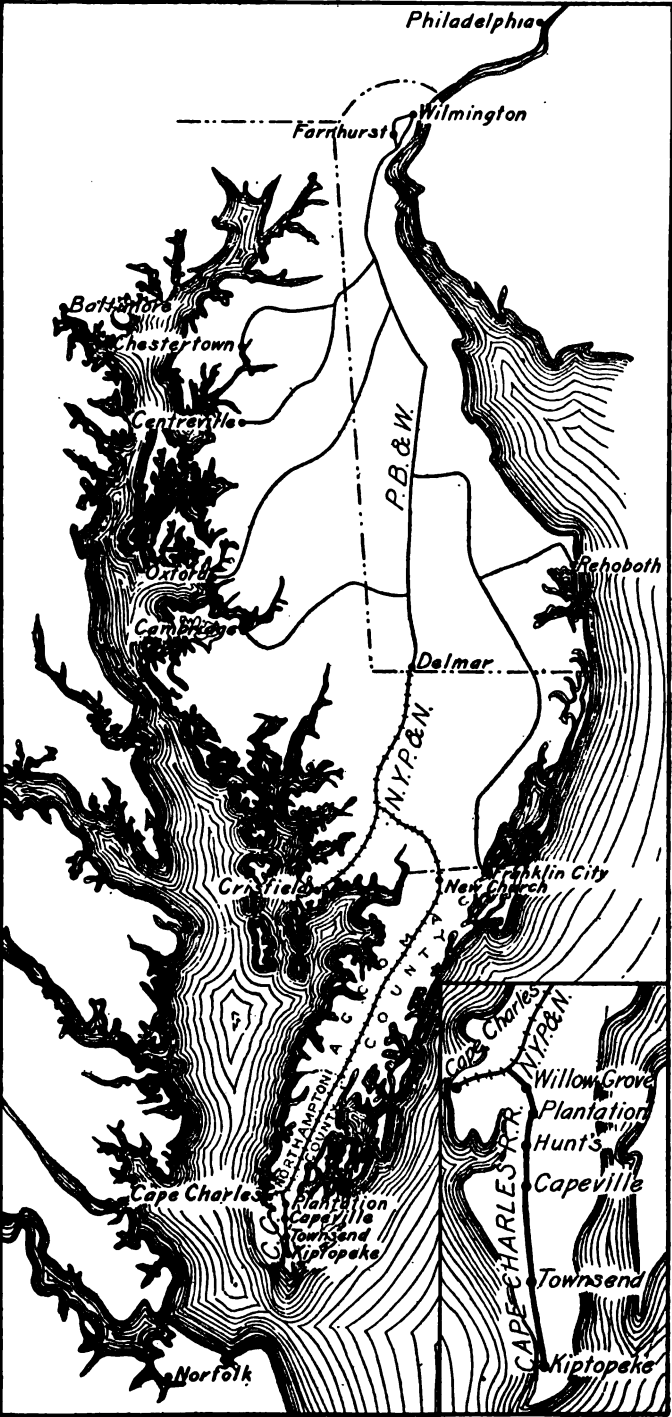
REPORT OF THE COMMISSION.

MEYER, Chairman:

Complainant, a truck farmer located in Northampton county, in the state of Virginia, alleges that the rates on vegetables, especially potatoes, from stations on the Cape Charles Railroad to Philadelphia, Pa., and New York, N. Y., are unreasonable and unjustly discriminatory. The complainant also requests the establishment of through routes and reasonable joint rates from these stations to Philadelphia and New York, and reparation is asked in an amended complaint. A number of other farmers located in the same part of the state have intervened in the complainant's behalf.

The Cape Charles Railroad extends in a southerly direction from Cape Charles, Va., to Kiptopeke, Va., a distance of 12.2 miles. It was built less than five years ago by the New York, Philadelphia & Norfolk Railroad, which owns all of its capital stock. Although it was separately incorporated, to avoid legal complications, the Cape Charles Railroad is virtually an extension of the New York, Philadelphia & Norfolk Railroad. It is operated by the parent company, which furnishes all the necessary equipment. The total property investment as of June 30, 1915, was \$129,350.22.

The country served by the Cape Charles Railroad is the southern end of the peninsula lying between the Chesapeake Bay and the Atlantic Ocean. It is almost wholly devoted to agriculture, potatoes being the principal crop. In 1915 the production of potatoes in the



territory served by the Cape Charles Railroad is said to have been 520,000 barrels. Large quantities of potatoes were grown on the southern end of this peninsula many years before the construction of the Cape Charles Railroad. It was customary in those days for the farmer to haul his vegetables in wagons to a wharf on the nearest estuary, from which boatmen would take them by water to Cape Charles, the southern terminus of the New York, Philadelphia & Norfolk Railroad. The boatmen charged from 8 cents to 15 cents per barrel for this service.

This method of handling the potato crop was very unsatisfactory to both the rail carrier and the shippers. The white potato crop must be marketed in a period of six or seven weeks, but the boats were unable to move the crop with the necessary dispatch, and the congestion at Cape Charles at the height of the shipping season was serious. The necessity of draying the potatoes from farm to wharf, transferring them from wharf to boat, unloading them from the boats and loading them into cars at Cape Charles, caused the shippers considerable inconvenience, and the potatoes often reached the markets in poor condition. To relieve the congestion at Cape Charles and at the earnest solicitation of the shippers, the New York, Philadelphia & Norfolk Railroad constructed the Cape Charles Railroad. It was completed in March, 1912. The result has been very beneficial to all concerned. During the shipping season empty cars are sent in large numbers to all the shipping points, and the potatoes are transported directly to the markets with a promptness which was impossible before the construction of the Cape Charles Railroad. The production of potatoes has greatly increased, and the values of land have risen.

Upon the completion of the new road the rates on potatoes and cabbage from its stations to the principal markets were made, and are now made, by combination on Cape Charles, the rates to Cape Charles being commodity rates lower than the class rates. The rates on potatoes and cabbage, per standard barrel, in carloads, to Cape Charles from all stations on the Cape Charles Railroad are shown in the following table:

To Cape Charles, Va., from—	Cents.	To Cape Charles, Va., from—	Cents.
Willow Grove.....	5	Capeville.....	7
Plantation.....	7	Townsend.....	9
Hunt's Siding.....	7	Kiptopeke.....	11

The rates on potatoes, in cents per barrel, in carloads, to Philadelphia and New York from Norfolk and from stations on the Cape
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Charles Railroad, together with the distances, are shown in the following table:

From—	To Philadelphia, Pa.		To New York, N. Y.	
	Miles.	Rate.	Miles.	Rate.
Norfolk, Va.....	255	26.3	345	26.3
Cape Charles.....	219	26.3	309	31.5
Willow Grove.....	223	31.3	313	36.5
Plantation.....	224	33.3	314	38.5
Hunt's Siding.....	225	33.3	315	38.5
Capeville.....	226	33.3	316	38.5
Townsend.....	228	35.3	318	40.5
Kiptopeke.....	231	37.3	321	42.5

The complainant's principal contention is that the construction of rates from Cape Charles Railroad stations by full combination on Cape Charles results in unjust discrimination, especially since lower joint through rates are published from Norfolk and from stations on the main line of the New York, Philadelphia & Norfolk Railroad, Cape Charles and north. In this connection the complainant relies principally upon the facts shown in the following table:

To New York, N. Y., from—	Miles.	Rate on potatoes per net ton.	Revenue per ton-mile.	Earning per car (15 tons).
Kiptopeke.....	321	\$5.15	16.04	\$77.25
Plantation.....	314	4.67	11.87	70.05
Cape Charles.....	309	3.82	12.36	57.30
Norfolk.....	345	3.19	9.24	47.85

The defendants maintain that a closer analysis of the transportation conditions shows this comparison to be misleading. They direct our attention to the fact that the rate from Norfolk is depressed by water competition. The Old Dominion Steamship Company maintains a daily boat service between Norfolk and New York and the Clyde line has three sailings a week from Norfolk to Philadelphia. Potatoes are shipped in large quantities by water, and the boat service is said to be prompt and efficient. In *Gillis & Son v. P., B. & W. R. R. Co.*, 26 I. C. C., 61, the Commission said:

The rate to Norfolk is fixed and controlled by the competition of water carriers operating between Philadelphia and Norfolk, and it can not properly be made the measure of rates to intermediate points.

In Fourth Section Order No. 4242, dated September 17, 1914, we authorized the petitioners to continue lower class and commodity rates from New York and Philadelphia to Norfolk than the rates contemporaneously applicable on like traffic to intermediate points on the New York, Philadelphia & Norfolk Railroad.

Water competition does not exist to the same extent at Cape Charles, or at other points on the Cape Charles Railroad. Under these circumstances there seems to be merit in the defendants' contention that the transportation conditions are dissimilar, and that the rate from Norfolk can not fairly be used as a measure of the rates from Cape Charles Railroad stations.

The defendants also object to the comparison which the complainant makes between the rates from points on the Cape Charles Railroad and the rate from Cape Charles proper. The rate of 31.5 cents per barrel on potatoes from Cape Charles to New York applies as a blanket rate from New York, Philadelphia & Norfolk Railroad stations as far north as Delmar, Del., 95 miles north of Cape Charles. The defendants point out that Cape Charles is the most distant point in the blanket, and the revenue per ton-mile relatively low. From a mean point in the blanket the revenue per ton-mile from the blanket is approximately the same as the earning per ton-mile from Plantation, a representative station on the Cape Charles Railroad.

Potatoes are shipped in large quantities from stations on the main line of the New York, Philadelphia & Norfolk Railroad north of Cape Charles, and the complainant maintains that the blanketing of those stations under a common rate, while leaving the Cape Charles Railroad stations outside of the blanket adjustment, has resulted in unjust discrimination. The defendants' reply to this is that most of the stations within the blanket are on the main line where the density of traffic is heavy, while the Cape Charles Railroad is in every sense a branch line. The tariffs show, however, that the blanket rate of 31.5 cents to New York applies from branch-line points as well as from main-line points. Delmar, Del., is the northern terminus of the New York, Philadelphia & Norfolk Railroad. The blanket rate applies, however, from stations on the Philadelphia, Baltimore & Washington Railroad almost as far north as Wilmington, Del., including the branch lines to Chestertown, Centreville, Oxford, and Cambridge, Md., Rehoboth, Del., and Franklin City, Va., and from stations on the Crisfield branch of the New York, Philadelphia & Norfolk Railroad. The length of the blanket is approximately 188 miles.

We have frequently said that carriers, in blanketing a given territory under a common rate, must avoid unjust discrimination. The boundaries of a blanket should not be so drawn as to include within it a large number of producing points while other points similarly situated are excluded; and this is especially true when the area of production has clearly defined geographical limits. The complainant's contention is—

that in view of similar geographical and commercial conditions, shipping points on the New York, Philadelphia & Norfolk Railroad in Accomac and
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Northampton counties should constitute one traffic area and should be commonly grouped and that the small difference in distance and the fiction of the separate corporate existence of the Cape Charles Railroad Company should be ignored; if shipping points on the Cape Charles Railroad are continued outside the favored zone, fair regard to the rights of this community demand that the increased burden placed upon it should not exceed a reasonable switching charge.

The defendants' reply to this contention is that the operating conditions on the Cape Charles Railroad are most unusual. White potatoes constitute approximately 92 per cent of its total outbound tonnage, the balance consisting of other vegetables, poultry, game, fish, and grain. Practically all of the white potatoes move in a period of less than two months, and the road is almost idle for 10 months in the year. For the year ended June 30, 1915, the inbound tonnage averaged less than one car per day, and more than half of it consisted of fertilizer. The defendants also remind us that the New York, Philadelphia & Norfolk Railroad received little, if any, additional tonnage by reason of the construction of the Cape Charles Railroad, the tonnage now delivered to the latter carrier having been previously delivered to the former at Cape Charles.

Under these circumstances it seems clear that the defendants are entitled to impose an additional charge for the service performed by the Cape Charles Railroad.

Although the hauls from Cape Charles Railroad stations to Cape Charles proper are very short, the rates from those stations are considerably higher than the rates from Cape Charles. The distance from Plantation to New York, for example, exceeds the distance from Cape Charles by less than 2 per cent, while the rate on potatoes from Plantation to New York exceeds the rate from Cape Charles by 22.2 per cent. Similarly, the distance from Kiptopeke to New York is only 3.8 per cent greater than the distance from Cape Charles, while the rate from Kiptopeke is 34.9 per cent greater.

The complainant lays considerable emphasis on the fact that sweet potatoes and cabbage are often drayed to Cape Charles from farms near the Cape Charles Railroad. It is usually necessary, because of the short duration of the shipping season and the great volume of tonnage, to load white potatoes into the cars at the Cape Charles Railroad stations. Sweet potatoes, however, ripen later and are shipped at a season when the farmers are less pressed for time. It is customary for farmers located within 5 miles of Cape Charles to dray their sweet potatoes to the main line of the New York, Philadelphia & Norfolk Railroad in order to avoid paying the higher freight rates from the Cape Charles Railroad points. The defendants contend that wagon hauls of that length are not uncommon,

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and that, in fact, most of the farms are located some distance from the railroad, necessitating a wagon haul.

Potatoes are usually shipped from this district in box cars, some of which are ventilated at the ends. Refrigerator cars are not required. When unventilated box cars are furnished the doors are left open and slatted. At regular shipping stations they are slatted by the carrier; at private sidings by the shipper. The estimated weight of a barrel of white potatoes is 175 pounds; of sweet potatoes, 155 pounds. The number of barrels in a carload varies from 172 to 200.

The defendants show that the Cape Charles Railroad had a surplus of only \$106.19 for the calendar year 1914, after paying a 6 per cent dividend. The reports of that carrier to the Commission show, however, that in the year ended June 30, 1913, the Cape Charles Railroad paid dividends amounting to \$11,790, or 9 per cent on a capital stock of \$131,000, and that its surplus at the end of that year was \$23,283.38, or 17.7 per cent of its capital stock. At the close of the fiscal year ended June 30, 1915, the accumulated surplus was \$31,456.39 after dividend appropriations of \$7,860, or 6 per cent of the capital stock.

We find and conclude that the defendants' rates on potatoes in carloads from Cape Charles Railroad stations to Philadelphia and New York are now and for the future will be unreasonable and unjustly discriminatory to the extent that they exceed the rates contemporaneously in effect from Cape Charles by more than 4 cents per standard barrel. We further find that the defendants should establish joint rates on potatoes in carloads from these stations to Philadelphia and New York, and that such joint rates should not exceed the rates contemporaneously in effect from Cape Charles by more than 4 cents per standard barrel.

Although the complaint attacks the rates on "vegetables," the evidence was addressed almost exclusively to the rates on potatoes. We are unable, on the present record, to establish maximum rates on other vegetables than potatoes. The record shows, however, that the rates on cabbage, like the rates on potatoes, are made by full combination on Cape Charles, while the Cape Charles rate on cabbage is applied as a blanket rate as far north as New Church, Va., a distance of 57.7 miles. We suggest that joint rates be established on cabbage as well as on potatoes, and apparently such rates should not exceed the rates from Cape Charles by more than 4 cents per standard barrel crate.

The complainant claims reparation on past shipments. No proof of damage, however, was made at the hearing. The record shows that it is customary to sell potatoes in this district at the prices current at shipping points within the blanket. Producers located south of Cape Charles are usually required to shrink their prices by the
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amount of the freight charges from point of origin to Cape Charles. It is not definitely shown, however, that the freight charges on shipments from Cape Charles Railroad stations to New York or Philadelphia are paid by the shippers. Under these circumstances no reparation can be awarded.

An appropriate order will be entered.

No. 7933.

CONSOLIDATED FUEL COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY ET AL.

Submitted August 24, 1915. Decided March 20, 1916.

Defendants' rates for the transportation of soft coal in carloads from Mohrland and Hiawatha, Utah, to California points on the Atchison, Topeka & Santa Fe's branch line from Los Angeles, Cal., to National City, Cal., found to be unreasonable; a maximum joint through rate of \$8.65 per net ton prescribed.

D. D. Houtz for complainants.

T. J. Norton and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

W. D. Riter for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The complainants, the Consolidated Fuel Company and the Castle Valley Coal Company, attack the rates on soft coal in carloads from their mines in Utah to California points on the branch line of the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, running south from Los Angeles to National City, and on the Fallbrook, San Luis Rey, and Escondido branches connecting therewith. The Consolidated Fuel Company operates mines located at Hiawatha, Utah, while the Castle Valley Coal Company's mines are at Mohrland, Utah, not far from Hiawatha.

Both Hiawatha and Mohrland are on the Utah Railway, which connects with the Denver & Rio Grande Railroad, hereinafter called the Rio Grande, at Panther, Utah, about 70 miles southeast of Provo, Utah, and 22 miles north of Mohrland. The Utah Railway is operated by the Rio Grande under lease. Panther is the northern and Mohrland the southern terminus of the Utah Railway. The testimony shows that the distance from Mohrland to Provo is about 99 miles. The traffic moves over the Utah Railway to Panther; the Rio Grande from Panther to Provo; the San Pedro, Los Angeles & Salt Lake, hereinafter called the Salt Lake, from Provo to Los Angeles; and the Santa Fe from Los Angeles to destinations.

The complainants' chief competition is with coal from mines at Gallup, N. Mex. Gallup is a local point on the Santa Fe and 741 miles east of Los Angeles. On coal from Gallup to stations on its National City branch the Santa Fe receives the entire haul. Complainants allege that the rates from Utah points in effect at the time the complaint was filed were "unjust, unlawful, and discriminatory," and ask for joint through rates not in excess of those in effect from Gallup. All rates are stated in dollars per net ton.

At the time of hearing the rate from Gallup to Los Angeles was \$5.15 and from Gallup to the points here involved \$6.15. The rate from the complainants' Utah mines to Los Angeles was at that time the same as the rate from Gallup, i. e., \$5.15, but the rates from the complainants' mines to the stations south of Los Angeles were from \$6.85 to \$8.15, made up of the combinations of intermediate rates on Los Angeles. Effective July 15, 1915, the rate from Gallup to Los Angeles was increased from \$5.15 to \$5.65, and the \$5.65 rate was extended by the Santa Fe to its stations south of Los Angeles here involved to and including Santa Ana. Effective August 14, 1915, the \$5.15 rate from the complainants' mines to Los Angeles was increased to \$5.65, and the combinations to the points here involved, based on Los Angeles, were thereby increased from \$7.35 to \$8.65.

The distance from Los Angeles to National City is 133 miles and from Los Angeles to San Diego 126 miles. All the points of destination, with the exception of Santa Ana and Anaheim, are local to the Santa Fe. Both the above points are reached by the Southern Pacific lines, while Santa Ana is also on the Pacific Electric Railway. The short-line distance from Gallup to San Diego, the largest and most important point involved and one practically at the end of the National City branch, is 813 miles. The short-line distance from the complainants' mines to San Diego is 909 miles, and, as explained, the haul is over three lines. The Santa Fe therefore contends that in view of this difference in distance and the one-line haul from Gallup the complainants are not entitled to the Gallup basis of rates. The complainants urge, however, that the basis

claimed by them is not inconsistent with other coal rates to California for similar distances, in certain of which the Santa Fe participates. It is shown that the Santa Fe joins with the Rio Grande and Western Pacific in a rate of \$6.15 from the complainants' mines to Bakersfield, Cal., a distance of 1,150 miles. Bakersfield is 170 miles north of Los Angeles. The same rate is effective between these points over the route formed by the lines of the Rio Grande and Southern Pacific for approximately the same distance. These hauls, it will be seen, are more than 200 miles greater than the haul from the complainants' mines to National City, the maximum haul here involved. A rate of \$6.15 also is effective from mines near Rock Springs, Wyo., to Bakersfield over the route formed by the lines of the Union Pacific and Southern Pacific, a distance of about 1,200 miles. The Santa Fe itself publishes a rate of \$5.15 from its mines at Gallup to San Francisco, a distance of 1,041 miles. These rates, however, are competitive, whereas the haul south of Santa Ana is local to the Santa Fe.

The Salt Lake and the Rio Grande are willing to establish the rates asked for in the petition. The Santa Fe also is willing to join in the joint rate asked under certain conditions. The Salt Lake's route to Los Angeles is via San Bernardino, 60 miles east of Los Angeles. The Santa Fe parallels this line of the Salt Lake between San Bernardino and Los Angeles. The complainants' coal could, therefore, when destined to Los Angeles, be delivered by the Salt Lake to the Santa Fe at San Bernardino instead of Los Angeles. The Santa Fe's proposal is that it will open up its National City branch points to this Utah coal, in competition with its own Gallup coal, by establishing the rate desired by the complainants, provided that the shippers of Utah coal destined locally to industries on the Santa Fe's tracks at Los Angeles may, if they choose, route their coal via San Bernardino, thereby giving to the Santa Fe a line haul from San Bernardino instead of only its present switching movement at Los Angeles. The Santa Fe does not suggest the routing of this traffic exclusively via its line from San Bernardino, but only the opening of the additional route to such traffic as the Santa Fe may be able to secure in competition with the Salt Lake. The Salt Lake declines to allow itself to be short hauled on its Los Angeles coal. This phase of the case is mentioned as incidental to the main issue and because of the extended discussion thereof at the hearing. Such a disagreement between these defendants concerning coal destined for Los Angeles can have no material bearing upon the issue of reasonableness of the rates to the points here in question.

Although the complainants attack the rate situation as unduly discriminatory and ask to be put on the same basis as Gallup, we are

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not justified on the evidence of record in establishing a relationship between the two points. No adequate evidence was introduced to show the similarity of operating conditions. If the rate herein prescribed as reasonable should be regarded by complainants as resulting in unjust discrimination, they are at liberty to seek relief by filing another complaint showing the unjust discrimination alleged.

We are of the opinion and find, however, that joint through rates from said Utah points should be established and that the rates complained of are and for the future will be unreasonable to the extent that they exceed \$6.65 per net ton to Fullerton, El Toro, Oceanside, San Diego, National City, Fallbrook, San Luis Rey, Escondido, and other points mentioned in the complaint on the Santa Fe's branch line running south from Los Angeles to National City, which rate we shall prescribe as the maximum for the future. The carriers will be expected to grade the rates back to a rate of \$5.65 to Santa Ana and points north thereof, including Fullerton. The Salt Lake having admitted at the hearing that the natural routing to the points here involved is via San Bernardino, we consider that the Salt Lake should turn over this traffic to the Santa Fe at that point.

An order will be entered accordingly.

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No. 7978.

MERIDIAN GRAIN & ELEVATOR COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted October 2, 1915. Decided February 8, 1916.

Refusal of defendants to establish and maintain transit arrangements at Meridian, Miss., on cottonseed cake and meal shipped to that point from points in various states, there to be ground, graded, and sacked and shipped to various interstate destinations not found unjustly discriminatory or otherwise in violation of the act. Complaint dismissed.

R. A. Chadwick for complainant.

W. H. Fowle for Alabama & Vicksburg Railway Company, New Orleans & Northeastern Railroad Company, Alabama Great Southern Railroad Company, Southern Railway Company, Southern Railway in Mississippi, and Mobile & Ohio Railroad Company.

Gentry Waldo for Southern Pacific lines.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is engaged at Meridian, Miss., in the business of buying cottonseed cake and meal, grain, grain products, and hay, and in manufacturing and shipping mixed feeds of various kinds.

The complaint alleges that unjust discrimination against complainant, its traffic, and the city of Meridian results from the refusal of defendants to accord transit arrangements at that point on cottonseed cake in carloads shipped from producing points in the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas, to be ground at Meridian and the meal shipped out in carloads to points in trunk line territory, central freight association territory, and western trunk line territory, and to all points on and south of the Ohio and Potomac rivers and east of the Mississippi River; and on cottonseed meal shipped to Meridian to be graded and sacked and reshipped; and that under defendants' existing tariffs complainant must pay the rates to and from Meridian which results in unreasonable charges on the through transportation from points of origin to points of destination.

We are asked to require the defendants to establish and maintain rates for the transportation of the commodities named in carloads

from points of origin in the states of production to points of destination in the territories described, with transit at Meridian as above described, which shall not exceed the through rates now in effect by more than \$5 per car.

Meridian is located near the Mississippi-Alabama state line, about 135 miles north of Mobile, Ala., about 153 miles southwest of Birmingham, Ala., and about 200 miles northeast of New Orleans, La. It is reached by rails of the Alabama & Vicksburg Railway Company, Alabama Great Southern Railroad Company, Meridian & Memphis Railway Company, Mobile & Ohio Railroad Company, New Orleans & Northeastern Railroad Company, and Southern Railway Company. Complainant's plant is located on the tracks of the Mobile & Ohio, and that carrier makes a charge of \$1 per car for switching service which is absorbed on competitive traffic.

Complainant states that it has not installed grinding machinery in its mill, nor yet engaged in the business of grading and shipping cottonseed meal; that if the establishment of the transit arrangement is required it intends to install a plant with 100 tons daily capacity; and that some of the lines serving Meridian are willing to provide for such an arrangement. It appears that officials of the New Orleans & Northeastern, Alabama & Vicksburg, and Vicksburg, Shreveport & Pacific were in correspondence with a representative of complainant with regard to shipments of cottonseed cake from points in Texas and points in Louisiana west of the Mississippi River which it was desired by complainant to mill at Meridian and ship to northern destinations. Complainant's representative was advised that the Alabama & Vicksburg and the Vicksburg, Shreveport & Pacific would establish the transit arrangement desired, provided western connections would join in a readjustment of revenue to the basis of rates and divisions applicable from points of origin to final destinations. The western carriers refused to consider the readjustment of rates on the basis suggested, and the proposed arrangement was not consummated.

After cotton is ginned at country gins the seed is sold and transported to oil mills, where it is converted into cake or ground into meal. Cotton seed varies in protein and ammonia content according to the varieties of seed and the climatic, soil, and other conditions under which the cotton is grown and the cake produced. The meal is used for fertilizer and for feed. In reducing seed to cake one mill will produce a certain grade and another mill an entirely different grade, while the product of the same mill will vary from day to day. A daily chemical analysis of the cake and meal is essential in order to determine its quality. The average oil mill in the cotton-growing territory has small crushing capacity and can not afford to make the

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analysis necessary to properly grade the cake and meal. As a result concentrating and grading plants have been established at many points where cake and meal may be graded and sacked.

It is asserted by complainant that cake and meal concentrated at Meridian can not pay the local rates inbound and outbound and compete for business with large oil mills having modern equipment which grind, analyze, and grade their own products and ship direct to consumers, or with concentration plants which enjoy transit arrangements in connection with the grinding, grading, and sacking of the cake and meal. Plants named by complainant, with which it alleges it will have to compete in the sale of cake and meal, are located at Chicago and Peoria, Ill.; Milwaukee, Wis.; Hammond, Ind.; Buffalo, Cohocton, and Binghamton, N. Y.; Cincinnati, Ohio; and Louisville, Ky. It is also asserted that there are plants at the Gulf ports and at Dallas and Fort Worth, Tex. It appears that at Cincinnati and Louisville transit is not granted on cottonseed cake and meal, and that any transit at the Gulf ports is applicable only to traffic for export.

Complainant testified that meal ground from cake received from different points of origin would have to be blended, and that the actual identity of the shipments inbound and outbound could not be maintained. Transit rules maintained by Texas carriers provide only for grinding and sacking in transit. Substitution is not permitted.

There is no point south of the Ohio River and east of the Mississippi River on the line of any carrier that has a grinding, grading, and sacking in transit privilege such as is asked for by complainant. It is contended by complainant that as defendants participate in joint rates for the transportation of shipments which are accorded transit by other lines at points north of the Ohio River, they can not escape liability for refusing to provide a similar arrangement at Meridian. It does not necessarily follow, however, that unjust discrimination exists because of transit arrangements provided by their connections north of the Ohio River. It has often been held by the Commission and the courts that not every discrimination is forbidden by the statute, but only those that are unjust and therefore unreasonable. Upon the facts of this case we do not find that unjust discrimination against complainant exists at Meridian.

The carriers serving Meridian are parties to Hinton's I. C. C. No. 74, which contains a general rule referring to connecting lines that grant transit privileges in accordance with the requirements of rule 10 of Tariff Circular 18-A. The tariff also contains the following provision:

The granting of the privileges and performance of the services described in this note shall be entirely upon the responsibility and at the cost of the carriers

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granting the privileges and performing the services, and without requiring the participation therein of any other carrier, in the absence of authority therefor from such other carrier.

A similar provision is carried in other tariffs to which the defendants serving Meridian are parties. The arrangements existing between the southern and northern carriers in this connection are similar to those dealt with in *Lumber Transit Privileges at Buffalo, N. Y.*, 33 I. C. C., 601. In that case the refusal of the southern carriers to join in transit arrangements on lumber at Buffalo was not condemned. The fact that carriers in another territory far removed from Meridian grant transit arrangements with respect to cottonseed cake and meal, to which the carriers serving Meridian are not parties, and with respect to which they are not responsible, does not, in our opinion, effect unjust discrimination against complainant or Meridian.

Complainant further contends that cottonseed cake and meal as commodities are unduly discriminated against because defendants allow transit arrangements on lumber, cotton, grain, alfalfa hay, linseed-oil cake and meal, and cottonseed oil. Cottonseed cake and meal are not in competition with lumber, cotton, and cottonseed oil, although linseed cake and meal, grain, alfalfa meal, and hay, are sold for feed generally throughout the country, and thus compete with cottonseed cake and meal. However, there is no evidence upon which we can find that resulting discrimination, if any, is unjust.

Complainant made numerous other contentions which it is not deemed necessary to discuss in detail. They have all had full consideration in connection with what we find to be the proper disposition of the case.

There is no evidence in the record that the rates into or out of Meridian are unreasonable, and we therefore find that the application of inbound rates on shipments stopped at Meridian and reshipped at outbound rates from there is not shown to result in unreasonable charges.

It follows from the views above expressed that the complaint must be dismissed. It will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 696.

HOOPS FROM CHAFFEE, MO.

Submitted January 16, 1916. Decided March 16, 1916.

Proposed increased rate on coiled elm hoops from Chaffee, Mo., to Thebes, Ill., found not justified and schedules under suspension ordered canceled.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

G. B. Webster for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Schedules filed by the St. Louis & San Francisco Railroad Company and James W. Lusk, W. C. Nixon, and W. B. Biddle, receivers thereof, to take effect August 18, 1915, proposed to increase the rate on coiled elm hoops in carloads from Chaffee, Mo., to Thebes, Ill., from 4 cents per 100 pounds to 6 cents. Upon protest filed by S. A. Ruch, who is engaged in manufacturing and shipping coiled elm hoops at Chaffee under the name of S. A. Ruch Hoop Company, hereinafter called protestant, the schedules were suspended until December 16, 1915, and later until June 16, 1916.

The present rate was established in compliance with our order in *Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 488, wherein it was shown that a rate of 4 cents applied on local shipments of lumber, including hoops, from Cape Girardeau, Mo., to Thebes, and that a proportional rate of 2.5 cents applied on the same traffic for beyond over the Chicago & Eastern Illinois Railroad; that Thebes is 28 miles from Cape Girardeau and only 15.6 miles from Chaffee; that Chaffee is not necessarily intermediate to Thebes from Cape Girardeau, but that for operating reasons through shipments from Cape Girardeau to Thebes are first hauled to Chaffee yard; and that the proportional rate of 2.5 cents was established by the St. Louis & San Francisco Railroad in the adjustment of a controversy with the city of Cape Girardeau, as has recently been explained in *Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R. Co.*, 36 I. C. C., 262. We found that the 6.5-cent rate attacked from Chaffee to Thebes was unreasonable to the extent that it exceeded 4 cents.

Protestant's mill is located on the rails of the St. Louis & San Francisco, but the entire service performed by that carrier in con-

nection with shipments from Chaffee to Thebes is a switching movement of about 1 mile from protestant's mill to the transfer track of the Chicago & Eastern Illinois at Chaffee yard. The Chicago & Eastern Illinois hauls the traffic north to Rockview, Mo., over the rails of the St. Louis & San Francisco, 2 miles, and thence east over the rails of the St. Louis Southwestern Railway to the Thebes bridge, of which the Chicago & Eastern Illinois is a part owner, and thence over the bridge to Thebes. Shipments originating at Chaffee are billed by the St. Louis & San Francisco to Thebes Transfer, where they are rebilled by the Chicago & Eastern Illinois. In the *Disher Case*, *supra*, we said:

In determining whether the provisions of section 4 of the act, as amended, are contravened, we can not compare the proportional rate from Cape Girardeau to Thebes with the local rate from Chaffee to Thebes. But we may with propriety consider the local rate of 4 cents from Cape Girardeau to Thebes. The defendants have argued that this latter rate is the result of water competition, in the form of transfer boat service from Cape Girardeau to the east side, but we do not find that this competition is other than merely conjectural or possible. The Cape Girardeau-Thebes rate, therefore, can fairly be cited as what defendants consider a fully compensatory rate for transporting lumber 28 miles. That being so, it follows that a local rate of 4 cents from Chaffee to Thebes would be compensatory.

The tariff naming the increased rate from Chaffee to Thebes carries a 6-cent rate on coiled elm hoops from Cape Girardeau, and respondents argue that the proposed rate of 6 cents from Chaffee to Thebes is reasonable, because it does not exceed the increased rate from Cape Girardeau which has not been protested. But it does not follow from our findings in the *Disher Case*, *supra*, that the proposed rate from Chaffee to Thebes is reasonable merely because it does not exceed the rate from Cape Girardeau. Protestant asserts that with the possible exception of a few cars of cooperage stock from Cape Girardeau to points in southern Illinois, there is practically no movement on the 6-cent rate from Cape Girardeau; that it is a paper rate and was increased merely for the purpose of the argument now based upon it. He adds that the same rate from Chaffee would be both unreasonable and ruinous to his business. The record discloses no appreciable movement of lumber at the 6-cent rate either from Cape Girardeau to Thebes, or from Chaffee to Thebes.

Respondents state that the former relationship between the St. Louis & San Francisco and the Chicago & Eastern Illinois has been changed since the *Disher Case*, *supra*, was decided in that there has been a complete separation, both in finances and in operation, with the result that the haul from Chaffee to Thebes is no longer a one-line haul, but is over two distinct lines. The same argument was

advanced and found unavailing in *Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R. Co.*, *supra*. Exhibits were introduced by respondents to show that the 6-cent rate compares favorably with the rates in effect on lumber and articles taking the same rates to Thebes from points in Missouri and Arkansas on the St. Louis & San Francisco and in Missouri on the St. Louis Southwestern Railway and the St. Louis, Iron Mountain & Southern Railway for distances ranging from 2.8 miles to 175 miles. It appears, however, that there is no movement of coiled elm hoops from the points cited or of manufactured lumber except perhaps from one or two points. Another exhibit was introduced by respondents to show that the through rates in effect from Poplar Bluff, Mo., and Pochontas and Elaine, Ark., where coiled elm hoops are made, to Chicago, Ill., Milwaukee, Wis., Cincinnati, Ohio, and Fort Wayne, Ind., compare favorably with the through rates in effect from Chaffee to the same points.

The present 4-cent rate from Chaffee to Thebes yields 5.1 cents per ton-mile. The proposed rate would yield 7.7 cents. The St. Louis & San Francisco hauls the traffic about 1 mile. Since the separation of the St. Louis & San Francisco and the Chicago & Eastern Illinois each line has received one-half of the rate from Chaffee to Thebes on traffic for beyond. Respondents accordingly receive 40 cents a ton for their 1-mile haul. Traffic for beyond generally moves at the combinations of the rates to and from Thebes. The present rate on coiled elm hoops from Chaffee to Chicago, 393.6 miles, for example, is 14.5 cents per 100 pounds, which yields 7.4 mills per ton-mile. The rate on coiled elm hoops from Thebes to Chicago, 378 miles, is 10.5 cents per 100 pounds, which yields 5.5 mills per ton-mile. Under the divisions mentioned the Chicago & Eastern Illinois receives 12.5 cents out of the through rate from Chaffee to Chicago, or 6.3 mills per ton-mile for its actual haul; the St. Louis & San Francisco, 2 cents per 100 pounds for originating the traffic and switching it to the Chicago & Eastern Illinois. Under the proposed rate the St. Louis & San Francisco would receive 3 cents for this service.

We are not convinced that the changes which have occurred in the rate situation and operating conditions since our decision in the *Disher Case*, *supra*, warrant a departure from our previous finding. We find, therefore, that respondents have not justified the proposed rate before us, and an order will be entered requiring its cancellation.

38 I. C. C.

No. 7257.

STONE PRODUCERS SALES COMPANY

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY ET AL.

Submitted September 2, 1915. Decided March 16, 1916.

Charges collected for the transportation of building stone in carloads from Bedford, Ind., to Muskogee, Okla., not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

O. M. Rogers for complainant.

C. Lynde for intervener.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers and Midland Valley Railroad Company.

C. C. Hine for Chicago, Indianapolis & Louisville Railway Company.

H. G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the stone business, with general offices at Wilmington, Del. By complaint, filed September 11, 1914, it alleges that the rate of 30 cents per 100 pounds charged by defendants for the transportation of various carload shipments of building stone from Bedford, Ind., to Muskogee, Okla., during the period between December 1, 1912, and September 30, 1913, was unreasonable and unjustly discriminatory, in violation of sections 1, 2, 3, and 4 of the act; also that in assessing charges defendants failed to deduct a dunnage allowance. Reparation is asked and the establishment of a reasonable and nondiscriminatory rate for the future. A petition for leave to intervene in opposition to an award to complainant of a portion of the reparation claimed was presented at the hearing on behalf of Ira J. Williams, receiver of J. E. & A. L. Pennock, a copartnership engaged in the contracting and building business at Philadelphia, Pa.

The shipments consisted of dressed building stone, and moved to destination over defendants' lines through East St. Louis, Ill., consigned to J. E. & A. L. Pennock at Muskogee. Charges were col-

lected at a through rate of 30 cents per 100 pounds, composed of an arbitrary of 10 cents to East St. Louis and a commodity rate of 20 cents beyond. Complainant contends that a reasonable and non-discriminatory rate for the transportation would have been 20 cents per 100 pounds, which complainant states was and is the rate applicable on like traffic from Pueblo and other Colorado points to Muskogee. Reparation is asked on that basis. The alleged violation of the fourth section is predicated on a combination rate of 26½ cents per 100 pounds from Bedford to Muskogee, composed of a rate of 11 cents to St. Louis, Mo., a rate of 8½ cents thence to Carthage, Mo., and a rate of 7 cents beyond. But the 8½-cent component of this rate was a state rate not on file with us and Carthage is not intermediate to Muskogee over the routes of movement, movement by way of Carthage involving a back haul.

Complainant's only witness was a general traffic agent, who had no personal knowledge of the details of complainant's business or of the facts relative to these particular shipments, and who did not prepare the complaint. Intervener's only representative at the hearing was his counsel, who had no personal knowledge of the facts.

Complainant's witness submitted an exhibit containing numerous comparisons of the rate assailed with rates on stone between points in the general territory under discussion and in other sections of the country.

The arbitrary charged from Bedford to East St. Louis was 1 cent lower than the local rate between the same points, and the 20-cent rate beyond East St. Louis was blanketed to destinations over the entire state of Oklahoma.

We find that the charges assailed are not shown to have been unreasonable or otherwise in violation of the act, and an order will be entered dismissing the complaint.

Defendants' tariffs authorized a dunnage allowance on shipments in open cars of not more than 500 pounds per car, but no evidence was introduced to show that this allowance was not made. If deductions have not been made in accordance with the tariffs and the shipments have been overcharged to that extent, refund of the overcharges with interest should be made by defendants to the proper parties.

38 I. C. C.

No. 7454.
M. LONGO FRUIT COMPANY ET AL.
v.
ILLINOIS TRACTION SYSTEM ET AL.

Submitted March 25, 1915. Decided March 16, 1916.

Defendants' rules and practices concerning the transportation of less-than-carload shipments of perishable commodities from St. Louis, Mo., and East St. Louis, Ill., to contiguous territory not found to be unreasonable or unjustly discriminatory.

R. A. Thomann for M. Longo Fruit Company.

M. B. Hilliard for Gunn Fruit Company.

J. M. Tenney for Scalzo-Fiorita Fruit Company.

W. L. Baggerman for Baggerman Bros. Fruit, Produce & Kraut Company.

D. O. Williams and *J. A. Dotson* for D. O. Williams & Company.

J. B. Hardaway and *J. A. Knowlton* for Illinois Traction system.

R. J. Kramer for Baltimore & Ohio Southwestern Railroad Company.

Walter Nichols for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

W. Gray for Chicago, Burlington & Quincy Railroad Company.

C. S. Burg, *R. D. Williams*, and *A. R. Brashear* for Missouri, Kansas & Texas Railway Company.

H. G. Herbal and *F. G. Wright* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

Thomas Bond and *B. W. Redfearn* for St. Louis & San Francisco Railroad Company and its receivers.

R. J. Kramer and *Fred H. Behring* for Southern Railway Company.

E. D. Mohr for Louisville & Nashville Railroad Company.

J. M. Simon for Vandalia Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are individuals, copartnerships, and corporations engaged in the fruit and produce business at St. Louis, Mo. By complaint, filed November 2, 1914, they allege that defendants' rules and practices relative to the transportation of less-than-carload shipments of perishable commodities are unreasonable and unjustly dis-

criminary. The discontinuance of the rules and practices is asked, and that defendants may be required to furnish proper and adequate equipment for the protection of complainants' shipments of fruit and vegetables. Defendants are practically all of the common carriers that enter St. Louis and East St. Louis, Ill., by rail.

The rules involved provide that less-than-carload shipments of perishable freight weighing less than 15,000 pounds will be forwarded in box cars, when no regular refrigeration service is available, at rates lawfully in effect, at owner's risk, the bills of lading to bear an indorsement signed by shipper and agent reading "to be forwarded at owner's risk of damage by heat and cold." Complainants contend that the rule decreases the volume of their business during the winter months, in that it fosters neglect by defendants to supply suitable cars and serves as a shield to defendants' negligence in the handling and care of perishables, since all damage is attributed to freezing, thereby defeating just claims for damage.

Most of complainants' shipments are less-than-carload shipments and are confined to contiguous territory within a radius of 150 miles of St. Louis. Shipments are made f. o. b. St. Louis and East St. Louis, the consignees paying the freight charges at destination. It is stated that ordinary box cars can be used for a temperature down to about 24 degrees above zero; refrigerator cars in temperatures down to 10 degrees above zero. Heated cars, when properly equipped, can be used in practically all low temperatures. The danger period begins about November 1 and continues until about April 1. Complainants state that defendants have refused to receive consignments in cold weather for transportation in box cars unless the bills of lading contain the clause exempting defendants from liability for freezing. There are periods varying from a day to two weeks when it is not safe to ship in box cars. Complainants are thus shut off from their markets. Their merchandise deteriorates and in many instances spoils.

No definite evidence of the volume of complainants' traffic was submitted. One witness, without giving weights, estimated that his company averaged 100 shipments a day, but that approximately 40 per cent of this number moved intrastate. Another testified that his company averaged 150 shipments a day, weighing from 100 pounds to 3,000 pounds.

Defendants contend that the volume of the tonnage is small and does not warrant the increased expense of furnishing refrigerator or heated cars, and that a movement of 10,000 pounds is necessary to justify such service. Some defendants submitted statements of shipments handled by them covering given periods. The Missouri, Kansas & Texas, for example, shows that the total weight of fruit and

produce shipments from St. Louis, from November 18, 1914, to December 18, 1914, weighed 251,368 pounds, of which 173,503 pounds moved in refrigerator cars, and 77,865 pounds in box cars. These shipments moved over three divisions covering a distance of 227 miles, and to 53 destinations. The average weight per car was 758 pounds, and the total revenue for the period amounted to \$953.49. Some of the defendants furnish refrigerator cars on certain days of the week, which appears to be a satisfactory arrangement. Others, however, have attempted to furnish refrigerator service during certain intervals but have been compelled to discontinue the service because of insufficient tonnage. To handle the shipments in refrigerator cars would, in many instances, necessitate more cars. In shipping from St. Louis under the present system commodities liable to freeze and other freight for local points are handled in the same cars. Such things as pipe, buggies, and bulky miscellaneous freight can not be loaded into refrigerator cars on account of the narrow doors.

Complainants reply that refrigerator service for less-than-carload shipments is furnished at Chicago, Ill., Sioux City, Iowa, and elsewhere. But no definite evidence was offered relative to the tonnage at those points or that any of the defendants herein tendered such service at the points named.

Section 1 of the act to regulate commerce requires carriers to furnish refrigerator cars upon reasonable request therefor and the main question presented is whether or not complainants' request for refrigerator or heated cars for transportation of their less-than-carload shipments is reasonable. In *Lake-and-Rail Butter and Egg Rates*, 29 I. C. C., 45, we held the determining factor to be whether or not the tonnage offered was sufficient to render the request reasonable. Both this Commission and the courts have held that carriers have the right to make reasonable and appropriate rules respecting the acceptance and transportation of traffic.

Complainants' tonnage does not appear to be sufficient to warrant refrigerator or heated car service, and we find nothing unlawful or unreasonable in the notation placed on bills of lading exempting defendants from damage caused by freezing.

The complaint will be dismissed.

88 I. C. C.

No. 7263.

MEEDS LUMBER COMPANY

v.

FERNWOOD & GULF RAILROAD COMPANY ET AL

Submitted January 16, 1915. Decided March 16, 1916.

Claim for reparation on certain carload shipments of lumber from Knoxo, Miss., to Chicago, Ill., found to have been abandoned and complaint dismissed.

W. N. Webb for complainant.

G. H. McElroy for Fernwood & Gulf Railroad Company.

G. B. Auburtin for New Orleans Great Northern Railroad Company.

F. W. Gwathmey for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with headquarters at Meridian, Miss. By complaint, filed August 31, 1914, it alleges that the rates charged by defendants for the transportation of certain carloads of lumber from Knoxo, Miss., to Chicago, Ill., in August, 1912, were unreasonable and unjustly discriminatory. Reparation is asked.

The lumber was shipped in three cars on August 1 and August 5, 1912. It was dressed in transit at Jackson, Miss., and moved thence in two cars to Chicago, Ill. The freight bills covering the transportation of the two cars to Chicago, which also carried freight charges up to Jackson as advances, are dated August 21 and August 29, 1912. The bill dated August 21, 1912, is marked paid August 26, 1912. The claim was presented to the Commission informally on May 23, 1913, but was found impossible of disposition informally and complainant was so notified June 20, 1913, its attention being called to its right to file formal complaint. Complainant did not avail itself of this right until August 31, 1914, more than a year later.

Formal complaint was filed more than two years after the claims presented accrued and more than six months after notice to complainant that formal complaint would be necessary. The claims must therefore be considered to have been abandoned and the complaint will be dismissed. *Rule III of Rules of Practice; Bland & Fisher Lumber Co. v. T. & N. O. R. R. Co.*, Docket No. 7011, unreported; *Kenefick-Quigley-Russell Construction Co. v. S. Ry. Co.*, 36 I. C. C., 324, and other cases there cited.

No. 7635.
SHEBOYGAN MINERAL WATER COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted September 21, 1915. Decided March 16, 1916.

Charges assessed by defendants for the transportation of a mixed shipment of mineral water and ginger ale, bottled, and advertising matter, from Sheboygan, Wis., to Memphis, Tenn., found to have been unreasonable to the extent that they exceeded the aggregate of intermediate rates contemporaneously in effect. Reparation awarded.

G. W. Witte for complainant.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in bottling and shipping mineral water and other carbonated beverages at Sheboygan, Wis. By complaint, filed December 31, 1914, it alleges that the charges collected by defendants for the transportation of a mixed carload shipment of mineral water and ginger ale, bottled, and advertising matter, from Sheboygan to Memphis, Tenn., were unjust and unreasonable. Reparation is asked.

The shipment consisted of 17,600 pounds of mineral water and 6,586 pounds of ginger ale and advertising matter, and moved April 9, 1913: Chicago & North Western Railway to Chicago; Chicago & Eastern Illinois Railroad to Evansville, Ind.; Louisville & Nashville Railroad beyond. Charges were collected on the mineral water in the sum of \$76.80, at a commodity rate of 32 cents per 100 pounds, minimum 24,000 pounds; on the ginger ale and advertising matter, in the sum of \$40.17, at the fourth-class rate of 61 cents per 100 pounds.

The joint through class E rate of 42 cents per 100 pounds, minimum 30,000 pounds, governed by the southern classification, was legally applicable on mixed shipments of mineral water and ginger ale. The exact weight of the advertising matter is not of record, but apparently did not exceed 50 pounds. This matter was entitled to the identical rate applicable on the mineral water and

ginger ale which it advertised. A specific commodity rate of 5 cents per 100 pounds, minimum 30,000 pounds, applied from Sheboygan to Milwaukee, Wis., intermediate to Memphis, and a class E rate of 27 cents, 30,000 pounds minimum, beyond. The joint through rate applicable exceeded the aggregate of these two rates, but the discrepancy was protected by a fourth section application, and, effective May 15, 1913, a joint commodity rate of 32 cents, minimum 30,000 pounds, was established on mineral water and ginger ale in mixed carloads.

Complainant testified that ginger ale is flavored mineral water; that it is of practically the same value as mineral water and that ordinarily commodity rates on ginger ale and mineral water apply equally to straight or mixed carloads.

We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at the aggregate of the intermediate rates to and from Milwaukee which are found reasonable; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$20.97, with interest thereon at 6 per cent per annum from October 17, 1914.

An order will be entered awarding reparation, but as the rate found reasonable has been in effect since May 15, 1913, no order will be entered for the future. The shipment was undercharged \$9.03, but defendants may waive the undercharge.

88 I. C. C.

No. 7650.

S. T. ALCUS & COMPANY, LIMITED,

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 11, 1915. Decided March 16, 1916.

Rate applicable to the transportation of certain carload shipments of box material from New Orleans, La., to Durham, N. C., found to have been unreasonable. Defendants authorized to waive certain undercharges.

Henry Alcus for complainant.

M. L. Costley for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of box material at New Orleans, La. By complaint, filed January 9, 1915, it alleges that the rate applicable on 77 carloads of box material shipped from New Orleans to Durham, N. C., between January 31, 1910, and May 12, 1910, inclusive, was unreasonable, and asks that it may be authorized not to pay certain outstanding undercharges. The claim was presented to the Commission informally April 1, 1912. It appears that 36 of the shipments were delivered more than two years prior to April 1, 1912, and the claims based on them are barred by the statute of limitation.

The shipments properly before us moved: Illinois Central Railroad to Holly Springs, Miss.; St. Louis & San Francisco Railroad to Birmingham, Ala.; Seaboard Air Line Railway and Durham & Southern Railway beyond. Charges were collected at a rate of 26 cents per 100 pounds. The rate applicable was 34 cents per 100 pounds and there is an outstanding undercharge of 8 cents per 100 pounds on each shipment. For several years prior to February 1, 1910, defendants maintained a specific commodity rate of 26 cents per 100 pounds on box material in carloads from New Orleans to Durham. On that date the 26-cent rate was canceled and a rate of 34 cents applicable to lumber and articles taking the same rate became effective. On August 18, 1910, the 26-cent rate was reestablished and is still in effect. The 26-cent rate applied during the period of movement from New Orleans to Durham and other North Carolina points over routes other than the route of movement. ▲

26-cent rate also applied over defendants' lines to Durham from Hansen, La., 10 miles north of New Orleans on the Illinois Central Railroad.

The Illinois Central was the only defendant represented at the hearing, and its witness testified that the 26-cent rate was canceled by mistake and that the 34-cent rate in effect when complainant's shipments moved was unreasonable to the extent that it exceeded the former and subsequently reestablished rate of 26 cents. The same admission was made by other defendants on our special docket.

We find that the rate applicable to complainant's shipments was unreasonable to the extent that it exceeded the former and subsequently reestablished rate of 26 cents per 100 pounds, and that defendants may waive the collection of the outstanding undercharges on the shipments which were delivered subsequently to April 1, 1910. The 26-cent rate has been in effect since August 13, 1910, and no order for the future is necessary.

The complaint will be dismissed.

88 I. C. C.

No. 7882.

HENRY HOLVERSCHEID & COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY ET AL.

Submitted October 18, 1915. Decided March 16, 1916.

Charges collected for the transportation of a carload of coal from Coxton, Pa., to Lizton, Ind., reconsigned to Chicago, Ill., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

H. J. Koeber for complainant.

E. S. Ballard for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Henry Holverscheid and Henry J. Koeber, co-partners, engaged in the coal business at Chicago, Ill. By complaint, filed March 29, 1915, they allege that the charges collected by defendants for the transportation, in June, 1913, of a carload of anthracite coal from Coxton, Pa., to Lizton, Ind., reconsigned to Chicago, were unreasonable and unjustly discriminatory, in violation of sections 1, 2, and 3 of the act. Reparation is asked.

The shipment weighed 100,352 pounds and moved: Lehigh Valley Railroad to Buffalo, N. Y.; New York Central Railroad to Cleveland, Ohio; Cleveland, Cincinnati, Chicago & St. Louis Railway, hereafter called the Big Four, through Indianapolis, Ind., to Lizton. The consignee at Lizton refused to receive the shipment and it was reconsigned to Chicago, moving back to Indianapolis, thence forward over the Big Four to Kankakee, Ill., and over the Illinois Central Railroad to destination. No joint rate applied to Chicago over the route of movement, and charges were collected at a combination rate composed of a rate of \$3.50 per gross ton from Coxton through Indianapolis to Kankakee, a rate of \$1.16 per net ton from Kankakee to Chicago, and a rate of 20 cents per gross ton for the back haul from Lizton to Indianapolis.

Complainants contend that the charges collected were unreasonable and unjustly discriminatory to the extent that they exceeded the charges that would have accrued at a joint rate of \$3.50 per gross ton contemporaneously in effect over various other routes from Coxton to Chicago, plus 20 cents per gross ton for the back haul from

Lizton. An agent of the Big Four informed complainants that the combination rate of \$3.70 per gross ton was applicable to the shipment, and reparation is asked on that basis.

The rate charged for the portion of the haul from Kankakee to Chicago was higher than the rate applicable on similar traffic in the opposite direction between those points. But, except for this and the existence of lower rates over other routes, complainants offered no evidence to support their allegations. Defendants show that the route of movement is markedly circuitous in comparison with the routes over which the lower through rate cited applies.

Neither the misquotation of the rate applicable nor the maintenance of a higher rate from Kankakee to Chicago than in the opposite direction between the same points nor the application of a lower rate over other routes warrants the condemnation of the rate charged, which we find is not shown to have been unreasonable or unjustly discriminatory.

An order will be entered dismissing the complaint.

88 I. C. C.

No. 7709.

BRADLEY TIMBER & RAILWAY SUPPLY COMPANY

v.

MINNESOTA & INTERNATIONAL RAILWAY COMPANY
ET AL.

Submitted November 10, 1915. Decided March 16, 1916.

Claim for reparation on shipments of spruce pulp wood in carloads from Big Falls and Farley, Minn., to Rothschild, Wis., found to have been abandoned. Complaint dismissed.

V. A. Anderson for complainant.

D. F. Lyons for Minnesota & International Railway Company and Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sale of pulp wood at Duluth, Minn. By complaint, filed February 1, 1915, it alleges that the combination rates charged by defendants for the transportation of spruce pulp wood in carloads from Big Falls and Farley, Minn., to Rothschild, Wis., in August and September, 1912, were unreasonable to the extent that they exceeded rates of 12½ cents per 100 pounds from Big Falls and 11.65 cents from Farley. Reparation is asked.

The claim was presented to us informally April 19, 1913, and on August 26, 1913, after correspondence with the carriers concerned, we notified complainant that if he desired to pursue the matter formal complaint would be necessary. Formal complaint was presented to us January 21, 1915, more than one year and four months later. The complaint then filed was returned for certain corrections and was received in corrected form February 1, 1915.

The formal complaint was not filed within a reasonable time after complainant was notified that the claim could not be adjusted informally and claim must be held to have been abandoned. *Rule III of Rules of Practice; Kenefick-Quigley-Russell Construction Co. v. S. Ry. Co.*, 36 I. C. C., 324. The complaint accordingly will be dismissed.

No. 7966.
EAST ST. LOUIS COTTON OIL COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted September 29, 1915. Decided March 16, 1916.

Claim for reparation found to have been abandoned and complaint dismissed.

F. P. Fox for complainant.

Thomas Bond and *Carl Giessow* for St. Louis & San Francisco Railroad Company and James W. Lusk, W. C. Nixon and W. B. Biddle, receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cottonseed products, with its principal office at East St. Louis, Ill. By complaint, filed April 27, 1915, it alleges that the charges collected by defendants for the transportation of two carloads of cotton seed from Hornersville, Mo., to East St. Louis, in January, 1912, were unreasonable and unjustly discriminatory. Reparation is asked.

The claim was presented to the Commission informally June 27, 1912. On January 2, 1913, and again on December 19, 1914, complainant was notified that the claim could not be disposed of informally. Formal complaint was filed approximately three years and three months after the shipments were delivered and about two years and four months after complainant was first notified that formal complaint would be necessary.

We find that the claim was abandoned, and the complaint will be dismissed. *Rule III of Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91; and *Bland & Fisher Lumber Co. v. T. & N. O. R. R. Co.*, Docket No. 7011, unreported.

No. 8040.

WARREN WEBSTER & COMPANY

v.

PHILADELPHIA & READING RAILWAY COMPANY
ET AL.

Submitted September 9, 1915. Decided March 16, 1916.

Commodity rate on feed-water heaters from Camden, N. J., to Jacksonville, Fla., higher than the class rate applicable on the same articles between the same points, not shown to be unreasonable. Complaint dismissed.

H. M. Condie for complainant.

C. T. Wolfe for Philadelphia & Reading Railway Company.

E. C. Blanchard for Atlantic Coast Line Railroad Company, Norfolk & Western Railway Company, and Winston-Salem Southbound Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of steam-heating specialties at Camden, N. J. By complaint, filed May 10, 1915, it alleges that the defendants charged an unreasonable rate for the transportation of one feed-water heater from Camden to Jacksonville, Fla. Reparation is asked.

The heater with parts was shipped by complainant March 5, 1914, boxed and crated. It weighed 18,000 pounds and moved all rail. Charges were collected in the sum of \$80, at a commodity rate of 40 cents per 100 pounds, minimum 20,000 pounds. Shipments from Camden to Jacksonville are governed by the southern classification which rates feed-water heaters, in carloads, sixth class. The sixth-class rate from Camden to Jacksonville was 35½ cents. Complainant alleges that any rate higher than 35½ cents was unreasonable and asks reparation in the sum of \$9. The sixth-class rate is the only evidence adduced by complainant against the rate charged.

Defendants contend that the commodity rate charged was and is reasonable; that the class rate was not made with specific reference to feed-water heaters or other types of machinery, but to cover other articles rated sixth class; that the sixth-class rate is a water competitive rate; that machinery, including feed-water heaters, seldom

moves by water because of the risk of damage in handling at the ports, but that the commodity rate assailed is nevertheless affected by competitive influences and lower than it otherwise would be. Defendants compare the 40-cent commodity rate involved and the 35½-cent sixth-class rate for a haul of 890 miles, with the 49-cent sixth-class rate applicable to machinery from Camden to Atlanta, Ga., 783 miles.

The shipment was valued at about \$1,000 and the revenue received for its transportation was less than 9 mills per ton-mile. Commodity rates from points in trunk line territory to southern points higher than the class rates otherwise applicable from and to the same points were allowed in *Florida Mercantile Agency v. P. R. R. Co.*, 21 I. C. C., 85; *Frick Co. v. C. V. R. R. Co.*, Docket No. 4931, unreported; and *Meritas Mills v. N. Y., N. H. & H. R. R. Co.*, Docket No. 4873, unreported.

We find that the rate assailed is not shown to be unreasonable, and the complaint will be dismissed.

88 I. C. C.

No. 8174.

TALLAHATCHIE LUMBER COMPANY

v.

**YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.**

Submitted November 26, 1915. Decided March 16, 1916.

Rate of 25 cents per 100 pounds charged by defendants for the transportation of certain carload shipments of lumber from Philip, Miss., to South Bend, Ind., found not to have been unreasonable. Complaint dismissed.

J. H. Townshend for complainant.

J. L. Sheppard for Yazoo & Mississippi Valley Railroad Company and Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Philip, Miss. By complaint, filed July 22, 1915, it alleges that the rate of 25 cents per 100 pounds charged by defendants for the transportation of 30 carloads of lumber from Philip to South Bend, Ind., in March, April, May, and August, 1913, was unreasonable and unjustly discriminatory, in violation of sections 1, 2, and 3 of the act, to the extent that it exceeded 23 cents per 100 pounds. Reparation is asked. Some of the shipments were made more than two years prior to the filing of the complaint.

The shipments consisted of oak lumber, consigned to the Singer Manufacturing Company, an industry served by the New Jersey, Indiana & Illinois Railroad at South Bend, and moved according to the shipper's routing instructions: Yazoo & Mississippi Valley Railroad and Illinois Central Railroad to Chicago, Ill.; Wabash Railroad to Pine, Ind.; New Jersey, Indiana & Illinois Railroad to destination. Charges were collected at a combination rate of 25 cents per 100 pounds: 13 cents per 100 pounds from Philip to Cairo, Ill., and 12 cents beyond. A joint rate of 23 cents per 100 pounds was contemporaneously in effect over various routes involving other South Bend terminal lines, and rates from Memphis to South Bend were the same whether the New Jersey, Indiana & Illinois or some other terminal line delivered the shipments. The New Jersey, Indiana & Illinois joined in the 23-cent rate on December 3, 1913. Defendants

are willing to make reparation on the basis of the 23-cent rate subsequently established and explain that the failure of the New Jersey, Indiana & Illinois Railroad to participate before was due to an error.

We have held repeatedly that the existence of lower rates over routes other than a particular route of movement and the subsequent reduction of the rate over the particular route is not sufficient to establish the unreasonableness of the previous rate. *Abel & Roberts v. M. P. Ry. Co.*, 87 I. C. C., 712.

Convenient routes were available to complainant over which the shipments could have moved at the lower rate asked and the damage alleged could have been avoided.

We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed.

38 I. C. C.

No. 8055.
DORRIS MOTOR CAR COMPANY
v.
WABASH RAILROAD COMPANY ET AL.

Submitted September 30, 1915. Decided March 16, 1916.

Rate charged for the transportation of automobile gear frame steel side bars in less than carloads from North Milwaukee, Wis., to St. Louis, Mo., found to have been unreasonable to the extent that it exceeded the third-class rate. Reparation awarded.

C. H. Rodehaver for complainant.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of automobiles, with its principal office at St. Louis, Mo. By complaint, filed May 27, 1915, it alleges that the charges collected by defendants for the transportation of a less-than-carload shipment of automobile gear frame parts from North Milwaukee, Wis., to St. Louis, in November, 1914, were unreasonable. Reparation is asked.

The shipment consisted of 202 automobile gear frame steel side bars, loose, weighing 12,300 pounds, and three crates of automobile gear frame steel crossbars, weighing 1,560 pounds. The side bars weighed about 60 pounds each and were billed as automobile gear frame parts. The crossbars were billed as steel stampings. Charges were collected in the sum of \$64.54 at the first-class rate of 49.3 cents per 100 pounds on the side bars and the fourth-class rate of 25 cents per 100 pounds on the crossbars. Complainant alleges that the rate of 49.3 cents charged for the transportation of the side bars was unreasonable to the extent it exceeded the third-class rate of 31.5 cents contemporaneously in effect, and asks that the third-class rate be prescribed as a maximum for the future. The rate on crossbars is not attacked.

No commodity rates were applicable. The class rates applicable from North Milwaukee to St. Louis were and are governed by Illinois classification, except that when articles are not classified under the numbered classes in that classification the western classification

applies. The Illinois classification named the following less-than-carload ratings:

Vehicles, parts of:

Frames, gear, automobile (without attachments), iron or steel—

Loose 2 t first class

Crated or boxed First class.

Iron and steel and articles manufactured of same:

Stampings, n. o. s. (see note)—

In boxes, barrels, or in bulk, in gunny sacks Fourth class.

Loose, each weighing 15 pounds or more Fourth class.

NOTE.—The above ratings will not apply on articles of iron or steel advanced in stage of manufacture beyond the process of stamping; nor will they apply on iron or steel articles not advanced in stage of manufacture beyond the process of stamping, when rating is provided for the unfinished article specifically.

The western classification ratings were:

Vehicle parts, self-propelling:

Frames, loose, less than carload First class.

Metal parts, n. o. i. b. n., in barrels, boxes, or crates, less than carload First class.

Self-propelling vehicle parts, n. o. i. b. n., in packages or loose.. Double first class.

Both classifications named specific ratings on automobile gear frames complete, but neither carried a specific rating on automobile gear frame side bars or crossbars. The side bars and crossbars resemble ordinary structural steel channels, which are rated fourth class in less than carloads, except that they are of lighter construction and of somewhat greater value. They are not advanced in stage of manufacture beyond the process of stamping except that a small spring hanger forging is riveted to one end of each side bar. Under the provisions of Illinois classification the fourth-class rating applied on the crossbars or steel stampings in crates but not on the side bars, as they were advanced in the stage of manufacture beyond the process of stamping. The Illinois classification contained no rating applicable to the side bars, so that the double first-class rating in western classification on "self-propelling vehicle parts, n. o. i. b. n., in packages or loose," applied. The shipment was undercharged \$60.64.

A supplement to western classification, effective March 22, 1915, contains a specific third-class rating on automobile gear frame side bars, loose or in packages, which is the rating asked by complainant. Defendants offered no testimony with respect to the reasonableness of the rate charged. They contend, however, that no reparation should be awarded, and that the complaint should be dismissed for the reason that the third-class rating asked by complainant was established voluntarily on the shipper's application.

We find that the rate assailed was unreasonable to the extent that it exceeded the third-class rate of 31.5 cents per 100 pounds, and that for the future the rate applicable should not exceed the third-class rate contemporaneously in effect; that complainant made the shipment as described, and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$21.89, with interest from November 18, 1914. Defendants may waive the undercharge mentioned.

An appropriate order will be entered.

No. 7886.

BRIGGS & TURIVAS

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted July 22, 1915. Decided March 16, 1916.

Rate charged for the transportation of a carload of scrap iron from Hammond, Ind., to South Milwaukee, Wis., not found to have been unreasonable. Complaint dismissed.

J. H. Turivas for complainants.

R. H. Widdicombe and *A. F. Cleveland* for Chicago and North Western Railway Company.

H. I. Allen for Elgin, Joliet & Eastern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Carl R. Briggs and Joseph H. Turivas, co-partners, engaged in the scrap iron and steel business at Chicago, Ill. By complaint, filed April 5, 1915, they allege that the rate of 90 cents per gross ton charged by defendants for the transportation of a carload of scrap iron, shipped October 14, 1913, from Hammond, Ind., to South Milwaukee, Wis., was unreasonable. Reparation is asked.

The shipment originated at St. Paul, Minn., and was consigned to an industry at Hammond, located on the joint tracks of the Indiana 88 I. C. C.

Harbor Belt Railroad and the Elgin, Joliet & Eastern Railway, hereinafter called the Outer Belt. The shipment was refused by the consignee, and complainants directed the Outer Belt, in whose possession the shipment was, to reconsign it by way of the Chicago & North Western Railway to South Milwaukee. The Outer Belt connects with the Chicago & North Western only at West Chicago, Barrington, Upton, and Waukegan, Ill. The shipment was moved by the Outer Belt from Hammond to Waukegan, and thence by the Chicago & North Western to destination, 160 miles. Charges were collected at a commodity rate of 90 cents per gross ton. The Chicago & North Western maintains a commodity rate of 50 cents per gross ton on scrap iron in carloads from Chicago to South Milwaukee, and authorizes the absorption of charges from industries located on several lines at Hammond, but not from industries located on the Outer Belt. The rate charged is challenged solely on account of the lower rate applicable over the other route named. The other routes are only about one-half the length of the route of movement, but complainants suggest that the Outer Belt should have surrendered the shipment at Hammond for movement over a shorter route and at a lower rate.

Complainants could have secured the rate sought by routing the shipment differently. The route of movement conformed to the routing instructions actually given. No presumption of unreasonableness attaches to a rate over a particular route because a lower rate applies over another route, and there is no other showing that the rate charged was unreasonable.

The complaint will be dismissed.

38 I. C. C.

No. 8079.
DARE LUMBER COMPANY
v.
NORFOLK SOUTHERN RAILROAD COMPANY ET AL.

Submitted September 16, 1915. Decided March 18, 1916.

Reparation awarded on account of an unreasonable rate charged for the transportation of four carloads of lumber from Elizabeth City, N. C., to Spring Grove, Pa.

J. P. Greenleaf for complainant.

J. F. Dalton for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business with headquarters at Elizabeth City, N. C. By complaint, filed June 12, 1915, it alleges that the rate charged by defendants for the transportation of four carloads of lumber from Elizabeth City to Spring Grove, Pa., during the period from September 7, 1911, to January 14, 1913, was unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally January 31, 1913.

The shipments aggregated 214,300 pounds and charges were collected in the sum of \$300.02 at a joint rate of 14 cents per 100 pounds. The local rate from Elizabeth City to Berkley, Va., was 4 cents; the authorized specific of the lines beyond, 9 cents. The authorized basis for constructing through rates on lumber from Carolina points to eastern points was to add to the local rates to the Virginia gateways the specifics beyond such gateways, named by the northern lines. It is admitted by defendants that the publication of a joint rate higher than upon this basis was an error and that the rate applicable to the shipments was unreasonable to the extent that it exceeded 13 cents. A 13-cent rate was made effective March 29, 1913.

Complainant adduced no evidence to support its allegation of unjust discrimination.

We find that the rate complained of was unreasonable to the extent that it exceeded 13 cents per 100 pounds; that complainant made the shipments as described, and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been

damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$21.43, with interest from January 25, 1913. An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than two years, no order will be entered for the future.

No. 8050.

SMITH LUMBER COMPANY

v.

NORFOLK SOUTHERN RAILROAD COMPANY ET AL.

Submitted November 1, 1915. Decided March 16, 1916.

Reparation awarded on account of an unreasonable rate charged on a shipment of lumber from Wendell, N. C., to Newark, N. J.

J. G. Smith for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business, with its principal office at Boston, Mass. By complaint, filed May 25, 1915, it alleges that the rate charged by defendants for the transportation of a car of lumber, June 4, 1912, from Wendell, N. C., to Newark, N. J., was unreasonable. Reparation is asked. The claim was presented to the Commission informally February 8, 1914.

The complainant is the successor to and continues the business formerly conducted by the Elm City Lumber Company, which caused the shipment to be made to itself, at New Haven, Conn. The Norfolk Southern Railroad carried it to Norfolk, Va., where it was delivered to the New York, Philadelphia & Norfolk Railroad Company. Following delivery to the New York, Philadelphia & Norfolk it was reconsigned to Newark for delivery by the Delaware, Lackawanna & Western Railroad. Charges were collected at destination in the sum of \$105.80 on 46,000 pounds of lumber, at a rate of 23 cents per

88 I. C. C.

100 pounds. There was no authority for this rate, and the delivering carrier subsequently refunded \$4.60 to the shipper on the basis of the through rate of 22 cents per 100 pounds then in effect, which was based on the local rates to and from Norfolk. Complainant contends that no higher rate than 21 cents per 100 pounds should have applied because the local rate from Wendell to Norfolk was 8 cents and the authorized specific beyond, 13 cents. Defendants admitted in an informal presentation of the claim that this basis should have applied and that a rate in excess of 21 cents was unreasonable. A rate of 21 cents was established January 24, 1914.

We find that the rate assailed was unreasonable to the extent that it exceeded 21 cents per 100 pounds; that the shipment was made as described; that the Elm City Lumber Company paid and bore charges thereon at the rate herein found unreasonable; that complainant is the successor to the Elm City Lumber Company and has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that complainant is entitled to reparation in the sum of \$4.60, with interest from August 13, 1912. An order will be entered awarding reparation, but as the rate herein found reasonable has been in effect for nearly two years no order will be entered for the future.

88 I. C. C.

No. 3373.
IN THE MATTER OF THE MUNCIE & WESTERN RAIL-
ROAD COMPANY.

Submitted February 1, 1916. Decided March 24, 1916.

Upon rehearing, *Held*:

1. The Muncie & Western Railroad is a common carrier with which connecting carriers may participate in joint rates or to which they may make allowances for switching.
2. The refusal of the trunk lines serving Muncie to absorb the switching charges of the Muncie & Western to and from Ball Brothers and Gill Brothers while contemporaneously absorbing the switching charges of the Muncie Belt and the Lake Erie Belt to and from the same industries is unjustly discriminatory, in contravention of section 3 of the act.

A. W. Brady, Rollin Warner, and H. B. F. Macfarland for Muncie & Western Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

MEYER, Chairman:

This is a rehearing of a case originally decided by the Commission May 5, 1914, following an investigation to determine the nature of the service performed by the Muncie & Western Railroad Company and its right to receive allowances or divisions from connecting carriers. The original report, 30 I. C. C., 434, held that the Muncie & Western was the private plant facility of Ball Brothers Glass Manufacturing Company, hereinafter referred to as Ball Brothers, and that the allowance to it of a switching charge by connecting carriers was unlawful.

By tariffs filed to take effect April 1, 1914, the trunk lines serving Muncie canceled switching allowances on competitive traffic in car-load lots formerly made to the Muncie & Western, but continued to absorb the switching charges on similar traffic of the Muncie Belt and Lake Erie Belt, hereinafter described. On May 29, 1914, the Public Service Commission of Indiana issued an order canceling the tariffs proposing to discontinue allowances to the Muncie & Western on intrastate business.

In general the position taken by the Muncie & Western is that it is not a plant facility of Ball Brothers but a common carrier, and as such entitled to make charges for switching services rendered and to receive allowances therefor from connecting carriers; that if not a common carrier under the act, it nevertheless renders services of

transportation and furnishes instrumentalities used therein for which it is entitled to make charges and to receive allowances from connecting carriers; and that it is not a plant facility of the Gill Brothers Clay Pot Works, hereinafter referred to as Gill Brothers, an independent industry on its line, and is entitled to make charges and receive allowances therefor from connecting carriers in so far as shipments to and from Gill Brothers are concerned.

The record developed at the rehearing contains in amplified form many facts relevant to the origin and history of the Muncie & Western and a full description of its operations. The ensuing statement of facts, based upon the uncontradicted testimony of witnesses for the Muncie & Western, is necessary to a clear understanding of the situation here involved.

In 1888, following the discovery of natural gas in the vicinity of Muncie, Ind., Ball Brothers erected a large plant for the manufacture of fruit jars and similar glassware at a point about 1 mile south of the city. Other industries were soon established in the same locality, which became a suburb known as Industry. At that time Muncie was served by the Cleveland, Cincinnati, Chicago & St. Louis, commonly known as the Big Four, the Lake Erie & Western, and the Fort Wayne, Cincinnati & Louisville railroads. The latter road was the first to construct a switching track or belt line, later known as the Lake Erie Belt, from its main tracks to the factories at Industry, and for several years rendered satisfactory services, switching cars freely to and from the other railroads serving Muncie. In 1890 the Lake Erie & Western acquired control of the Fort Wayne, Cincinnati & Louisville, including its belt line, and refused to perform switching services to and from the Big Four tracks, with the exception of such cars as it was unable to handle over its own lines. It is testified that this resulted in unsatisfactory service, necessitating roundabout routings of traffic in order to give the Lake Erie & Western a long haul, and was opposed to the interests both of the shippers and the Big Four. To remedy this the Muncie Belt was organized in 1892 to connect with the Big Four and any other railroads that might eventually build into Muncie. The stock of the company was divided, 51 per cent to the Big Four and 49 per cent to citizens of Muncie, who it was agreed should have a majority of the directors and full management of the road for five years. It was completed in 1894 after litigation involving its right to make crossings over the Lake Erie Belt. The existence of two competing belt lines resulted in satisfactory service for about six years.

In 1898 the Chicago & Southeastern Railway, now the Central Indiana Railway, was being extended through Muncie to Brazil, in the coal fields of Indiana. Because of the threatened failure of

natural gas, the business interests of Muncie requested the Muncie Belt to afford the new road a connection. Action on this request was deferred from time to time until 1900, when the Big Four, having in the interim acquired control of the board of directors of the Muncie Belt, refused to permit a connection between the Muncie Belt and Chicago & Southeastern. Subsequently suit was begun by the Chicago & Southeastern against the Muncie Belt and Big Four to compel a connection. In April, 1902, however, judgment was rendered refusing to order the connection, and it was not until June, 1902, after the Chicago & Southeastern had secured stock in the Muncie Belt and threatened to have a receiver appointed that the desired connection was made. About this same time two other railroads were under construction to Muncie—the Cincinnati, Richmond & Muncie, now a part of the Chesapeake & Ohio Railway, and the Chicago, Indiana & Eastern, now a part of the Pennsylvania system.

In 1900 the New York Central lines, which controlled the Big Four, obtained control of the Lake Erie & Western and its belt, so that the two belt lines serving Muncie came under the control of one railroad, depriving shippers of the competitive conditions which it was expected the Muncie Belt would insure. In 1902 the operation of the two belts was consolidated under one superintendent and the services reduced. It is testified that in view of the decision of the court against the Chicago & Southeastern, it was generally believed that the attitude of the New York Central belts would be antagonistic to the new lines building into Muncie, referred to above, and the likelihood of their being afforded a connection problematical. Moreover, as the tracks of the Muncie Belt and the Lake Erie Belt surrounded the plant of Ball Brothers, it was doubted whether the new lines could condemn crossings with their sidetracks over the belt lines to that industry.

It is testified that because of the volume of its business and the necessity of prompt services Ball Brothers was greatly inconvenienced by the reduced services on the Muncie and Lake Erie belts, and, believing that a new belt line entirely independent of any railroad was desirable, incorporated the Muncie & Western in May, 1902. Tracks were laid from a connection with the Cincinnati, Richmond & Muncie to Ball Brothers, and later, upon the completion of the Chicago, Indiana & Eastern, to a connection with that line. Before extension could be made to the other factories at Industry the supply of natural gas failed and most of the plants at that place were shut down. The Muncie & Western, however, in 1911 was extended to Gill Brothers, and two other extensions are said to be contemplated. At the present time the Muncie & Western connects with the Muncie Belt and the Lake Erie Belt.

The entire capital stock of the Muncie & Western, amounting to \$50,000, is owned by the stockholders of Ball Brothers. There is no bonded indebtedness. The cash cost of the railroad to November 1, 1915, is said to have been \$36,638.18. With the exception of the general manager, the officers of the Muncie & Western and Ball Brothers are identical. The Muncie & Western leases its right of way from Ball Brothers, but owns and maintains its tracks, some 3.46 miles in length, of which about 2 miles are within the plant limits of Ball Brothers. The present mileage represents an increase of about one-half mile since the original report herein. The Muncie & Western owns no car or engine equipment, its motive power being furnished by the Muncie Belt, which performs a similar service for the Lake Erie Belt, the cost of operation being divided among the three roads in proportion to the number of cars handled. The Muncie & Western conducts a freight business exclusively, and the principal service performed is the switching of cars between the two industries on its tracks and trunk line connections. The business of Ball Brothers, where most of the services of the Muncie & Western are rendered, is not of a character to require interplant movements. Fuel and raw material are delivered at designated bins or storehouses, the glass products manufactured without further railroad movement, and stored in warehouses from which they are shipped in carload lots. Sporadic interplant movements are covered by a charge of \$1 per car for each movement.

The services rendered by the Muncie & Western in switching cars to and from Ball Brothers and Gill Brothers appear to be identical with those rendered to the same and other industries by the Muncie Belt and the Lake Erie Belt. It is pointed out that one warehouse of Ball Brothers is served both by the Muncie Belt and the Muncie & Western, the tracks of the respective roads being located on opposite sides of the warehouse. The switching charge of the Muncie Belt and the Lake Erie Belt is \$3 a car, except on Indiana coal. On competitive traffic the trunk lines serving Muncie absorb this charge.

Since the original report herein the Muncie & Western has endeavored to conduct its operations in such a manner as to remove all grounds of criticism. The lease covering its right of way, which provided a yearly rental of \$5,000, has been canceled and a new one executed naming a nominal rental of \$1 per year. The payment of salaries to officers of the railroad, who are also officers of Ball Brothers, has been discontinued except in the case of the general manager. The switching charges of the Muncie & Western have been reduced from \$2.50 a car on inbound material and \$3.50 a car on outbound products to \$2 a car on all carload shipments except Indiana coal, on which the charge is \$1.50 a car. This reduction

represents an endeavor on the part of the Muncie & Western to reduce its charge to a basis which would provide only for the actual cost of the service rendered. Under its present rates the earnings of the Muncie & Western can not exceed \$2 a car as compared with possible earnings of \$3 a car by the Muncie Belt and the Lake Erie Belt. The total number of revenue cars switched by the Muncie & Western was given in its annual report for the year ended June 30, 1915, as 8,263; operating expenses and taxes, \$13,970.77. Assuming a revenue of \$2 a car, and using these figures as a basis of calculation, the cost of operation and taxes per loaded car during 1915 was \$1.69, leaving a net revenue of 31 cents a car. It is pointed out, however, that if interest on the actual cash investment of \$36,617.48 at 5 per cent, depreciation at 2 per cent, and reserve for damages at 5 per cent of estimated revenue be added, the cost per loaded car would be \$2.109.

After the original report in this case was issued, the Supreme Court rendered its decision in *The Tap Line Cases*, 234 U. S., 1, in which it was held, at page 24:

* * * It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character. * * *

Applying this rule to the situation in hand, it is apparent that a duty rests upon the Commission to modify its findings in the original report herein. Upon a consideration of all the facts of record, we find that the Muncie & Western is a common carrier, with which connecting lines may participate in joint rates or to which they may make allowances for switching services.

In the *Chicago, West Pullman & Southern R. R. Case*, 37 I. C. C., 408, the Commission said, at page 415:

In this connection it should be stated that the trunk lines are not obliged to absorb the switching charges of common-carrier industrial lines. *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93; *Industrial Railways Case*, 32 I. C. C., 129; *Second Industrial Railways Case*, *supra*. The Commission may, however, require carriers to remove unjust discrimination occasioned by the absorption of switching charges in certain instances and not in others under like circumstances and conditions.

The switching services performed by the Muncie Belt and the Lake Erie Belt to and from Ball Brothers and Gill Brothers apparently do not differ substantially from the switching service performed by the Muncie & Western to and from the same industries. Under all the circumstances disclosed, we are of the opinion and find that the refusal of the trunk lines serving Muncie to absorb the switching charges of the Muncie & Western to and from Ball Brothers and Gill Brothers while contemporaneously absorbing the switching charges of the Muncie Belt and the Lake Erie Belt to and

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from the same industries is unjustly discriminatory in contravention of section 3 of the act, and from this unjust discrimination the trunk lines serving Muncie will be expected to cease and desist.

Upon the information at our disposal, the present rates of the Muncie & Western do not appear excessive for the services performed. Should the trunk lines serving Muncie decide to remove the discrimination found to exist herein by absorption of the switching charges of the Muncie & Western, they will be expected to apply the principles and rules heretofore laid down in *The Second Industrial Railways Case*, 34 I. C. C., 596; *Chicago, West Pullman & Southern R. R. Case*, 37 I. C. C., 408.

COMMISSIONER HARLAN did not participate in the consideration and disposition of this complaint.

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No. 6404.
FREIGHT BUREAU OF THE MERCHANTS & MANUFACTURERS ASSOCIATION
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted April 23, 1914. Decided March 30, 1916.

Complaint alleged that defendants' all-rail joint class rates from New York, N. Y., Philadelphia, Pa., and Baltimore, Md., to Birmingham, Ala., were unjust and unreasonable in that they exceeded the aggregate of the intermediate rates to and from Norfolk, Va. It appearing that those discrepancies have been corrected by defendants, complaint is dismissed.

J. T. Slatter for complainant.

R. Walton Moore, Frederick B. McKenney, M. P. Callaway, and Charles D. Drayton for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

In this proceeding defendants' all-rail joint through class rates from New York, N. Y., Philadelphia, Pa., and Baltimore, Md., to Birmingham, Ala., in effect at the date of the complaint, were assailed as unjust and unreasonable in that they exceeded the aggregates of the intermediate rates to and from Norfolk, Va. The complaint was filed December 10, 1913.

As the result of our orders in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153; 32 I. C. C., 61, the carriers undertook a comprehensive revision of rates in the southeast. Rates filed in accordance with this readjustment became effective January 1, 1916, with the result that since the hearing in this case the discrepancies complained of have been corrected.

The complaint will accordingly be dismissed.

No. 6625.

MICHIGAN PAPER MILLS TRAFFIC ASSOCIATION ET AL.

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted November 7, 1914. Decided February 18, 1916.

Upon complaint that the rates on paper from complainants' mills in Michigan to various destinations are unreasonable and unduly prejudicial, especially when compared with the rates from mills in Wisconsin to the same destinations, *Held:*

1. The evidence fails to show that the rates to Chicago, Ill., to Illinois territory generally, to western trunk line territory, or to trans-Missouri territory are unreasonable or unduly prejudicial.
2. Rates from complainants' mills to Oklahoma City, Okla., are 2 cents per 100 pounds higher than the combination on Chicago or St. Louis, and these rates should be corrected so as not to exceed such combinations.
3. Rates to New Orleans, La., found to be unjustly discriminatory and required to be readjusted.
4. Joint rates from Wisconsin mills to Nashville, Tenn., should be canceled, allowing the traffic to move on the Ohio River combination.
5. Readjustment of rates on paper from New England and northern New York, approved in *Official Classification Rates on Paper*, 38 I. C. C., 120, seems to require a readjustment of rates from Wisconsin mills to central freight association points, which should be made promptly.
6. Less-than-carload rates from complainants' mills not found unreasonable or unduly prejudicial.

F. A. Larish, C. R. Hillyer, and Cassoday, Butler, Lamb & Foster for complainants.

D. P. Connell for New York Central lines.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

F. G. Wright and H. G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

A. P. Humburg for the Illinois Central Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

C. C. Wright and R. H. Widdecombe for Chicago & North Western Railway Company.

C. T. Burg for Missouri, Kansas & Texas Railway Company.

H. T. Ratliff for Champion Coated Paper Company, intervener.

J. B. Daish for Michigan Bag & Paper Company, intervener.

F. J. Streyckmans for Wisconsin Pulp & Paper Manufacturers, interveners.

C. H. Tiffany for New England Paper & Pulp Traffic Association, intervener.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

Complainants are associations composed of manufacturers of printing, writing, tissue, and wrapping paper, and own and operate several mills at Kalamazoo, Plainwell, Otsego, and Vicksburg, all in Michigan. Kalamazoo is on the line of the Grand Rapids & Indiana Railway, Grand Trunk Western Railway, and New York Central Railroad; Plainwell is on the line of the Grand Rapids & Indiana Railway and New York Central; and Vicksburg is on the line of the Grand Rapids & Indiana and Grand Trunk Western Railway. Kalamazoo is in southwestern Michigan, 141 miles from Chicago; Plainwell is 11 miles and Otsego 15 miles north of Kalamazoo; Vicksburg is 12 miles south of Kalamazoo. These are the short-line distances. The average distance from these points to Chicago via all routes is said by the complainants to be 159 miles.

The complainants allege that the rate on paper of the various kinds enumerated above from their mills to points in central freight association territory, including Chicago, Ill., and Milwaukee, Wis.; to points in western trunk line territory, including Missouri River crossings; to points in trans-Missouri territory, including Denver; to points in Oklahoma and Louisiana; to New Orleans and points in the lower Mississippi River Valley; and to Nashville, Tenn., are unreasonable and unduly prejudicial. Rates to points in eastern trunk line territory are not attacked. The complainants also allege that the defendants' rates on paper in less-than-carload quantities from the complainants' mills to the various points in question are unreasonable and unduly prejudicial, and that the descriptions of paper contained in the defendants' tariffs are unreasonable.

The Pulp & Paper Manufacturers Traffic Association, a voluntary association of about 40 companies operating about 60 mills in the state of Wisconsin; the West Virginia Pulp & Paper Company, owning mills located at Mechanicville, N. Y., Tyrone and Williamsburg, Pa., Piedmont, W. Va., and Covington, Va.; the Champion Coated Paper Company, owning a mill at Hamilton, Ohio; and the New England Paper & Pulp Traffic Association, representing paper mills at South Brewer, Rumford Falls, Gardiner, Mechanic Falls, and Cumberland Mills, Me., Bennington and Sunapee, N. H., Lawrence, Pepperell, North Leominster, Fitchburg, West Fitchburg, Wheelwright, and Fairmount, Mass., and Pawtucket, R. I., intervened.

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The rating of paper in the official and western classifications is fifth class in carloads and third class in less than carloads. In the official classification territory, under exceptions to the classification made by various carriers, the rating on paper of the kinds produced by the complainants has been changed in many instances from fifth class to sixth class, and practically all the paper manufactured by the complainants is now carried throughout central freight association territory at sixth-class rates in carloads and at third-class rates in less than carloads.

The paper shipped by the complainants is valued at from \$1,500 to \$1,600 per carload. On the average it is worth about 4 cents per pound, and the average loading is approximately 40,000 pounds. It is shipped in box cars. The record indicates that practically no loss and damage claims arise in connection with the shipment of paper in carloads. The traffic moves steadily throughout the year. During the year 1913 the complainants' mills produced 115,431 tons of paper, the equivalent of 5,770 carloads. No news print paper is manufactured by the complainants, and the rates on news print paper are not involved in this proceeding.

With respect to practically all the points of destination here involved except Chicago, the allegation is that the rates complained of are unreasonable under section 1 of the act and unduly prejudicial to the complainants and their traffic under section 3. The principal points of production alleged to be unduly favored, in violation of section 3, are in Wisconsin, and are as follows:

De Pere, Green Bay, Kaukauna, Combined Locks, Little Chute, Kimberly, Appleton, Neenah, Menasha, Marinette, Oconto, Shawano, Merrill, Brokaw, Marshfield, Wausau, Rothschild, Stevens Point, Nekoosa, Port Edwards, Plover, South Centralia, and Grand Rapids. As to many of the rates in issue a violation of section 3 is also alleged in favor of mills at points in Ohio, including Dayton. Dayton, like the Michigan mills of complainants, is in central freight association territory. The Wisconsin points named are in western trunk line territory. The production of paper in tons by Michigan, Ohio, and Wisconsin mills for the year 1911, according to figures obtained by complainants from the report of the United States Government Tariff Board for that year, is shown to have been as follows:

	Writing.	Printing and book.	Tissue.	Wrapping.
Michigan.....	16,589	75,746	1,252	66,419
Ohio.....	23,099	92,711	1,972	66,794
Wisconsin.....	33,804	58,781	8,952	167,956

Before discussing the particular rates involved it may be stated that the complainants have submitted in evidence elaborate statements purporting to show by way of comparison the revenue per ton-mile, per car-mile, and per train-mile accruing under the rates from the Wisconsin mills and the complainants' Michigan mills, respectively, and showing also the relative density of tonnage throughout the different rate territories traversed by the carriers in the transportation from these respective mills. The same data are shown in connection with many of the rates from the Ohio mills. By these statements the complainants show that the rates from their mills would be lower in many cases if constructed upon the basis of the per ton-mile revenue yielded by the rates from the Wisconsin mills to the same points. Reference is particularly made in connection with the figures shown on certain of these exhibits to the fact that in western trunk line territory, in which the Wisconsin traffic originates, the density of tonnage is less and the average revenue per ton-mile greater than in central freight association territory. Especial stress is also laid by the complainants upon their showing with respect to the average earnings from the rate on paper compared with the average earnings on traffic generally. It is stated by the complainants that, for instance, the rate of 10 cents per 100 pounds from the Wisconsin mills to Chicago, discussed in the next paragraph, yields about the average revenue per ton-mile earned by the Wisconsin carriers on all their traffic, whereas the earnings under the complainants' rates to Chicago are much greater than the carriers' average earnings on all traffic. It is the contention of the complainants in this connection that paper is an average commodity, value and transportation conditions considered, and for that reason should not take rates which yield higher revenue than the average revenue derived by the carriers on all traffic. The results obtained by the complainants from their various exhibits are therefore based to a large extent upon the element of distance. Distance, while important, is not necessarily controlling, especially when there is under consideration, as in this case, a comprehensive fabric and relationship of rates to points in various sections of the country.

THE RATES TO CHICAGO.

The rates to Chicago, although included in the general complaint against rates to points in central freight association territory, are dealt with separately by the complainants, presumably because of the unusual importance of Chicago as a market. The rate on paper to Chicago is 9 cents per 100 pounds from Kalamazoo, Plainwell, and Otsego, and 8½ cents per 100 pounds from Vicksburg. The average revenue per ton-mile yielded by the rates from com-

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plainants' mills to Chicago for an average distance of 159 miles is about 11 mills. The carriers operating from the complainants' mills to Chicago are not the same as those operating from the Wisconsin mills to the same point, and no violation of section 3 of the act arising from the undue preferment of the Wisconsin mills over those of the complainants is alleged with respect to the Chicago rate. The allegation as to the Chicago rate from the complainants' mills is that it is inherently unreasonable under section 1 and unduly prejudicial under section 3, not against the complainants in favor of their competitors in Wisconsin, but against paper as an article of traffic. The rate from the competing Wisconsin mills to Chicago is 10 cents per 100 pounds. It is stated in the record that the rates from the complainants' mills to Chicago are based upon the central freight association sixth-class mileage scale. The Kalamazoo rate is one-half cent in excess of that scale via the short line, and the Plainwell and Otsego rates are exactly on the scale basis. Upon the basis of the average revenue per ton-mile from the Wisconsin mills the complainants contend that the rate to Chicago from their mills should not exceed 6.46 cents. It is stated on behalf of the complainants that the average distance from the Wisconsin mills to Chicago is 246 miles, as compared with an average distance from the complainants' Michigan mills of 159 miles. Upon consideration of all the evidence we are of opinion and find that the rates to Chicago are not shown to be unreasonable or unjustly discriminatory.

RATES TO POINTS IN CENTRAL FREIGHT ASSOCIATION TERRITORY.

The complaint against the rates from the complainants' mills to points generally in central freight association territory is based upon allegations of unreasonableness under section 1 and undue prejudice and disadvantage in favor of the Wisconsin mills under section 3. The rates from the complainants' mills to points in central freight association territory, like the rates between other points in that territory, are based on the sixth-class mileage scale. From the Wisconsin mills joint through rates are in effect, which, as shown by exhibits submitted by the complainants, are lower in many cases than they would be if based upon the central freight association scale. As stated, the Wisconsin mills are in western trunk line territory, where, according to the contentions and exhibits in support thereof filed by the complainants, the density of tonnage is less and the average revenue per ton-mile of the carriers greater than in central freight association territory. It is pointed out that from the Wisconsin mills the haul of the carriers for a considerable part of the distance is through a higher rate territory than from the complainants' mills.

Rates from the Wisconsin mills to points in central freight association territory were originally made, according to the testimony of the defendants, on a basis which would enable the producers there located to meet the competition of paper shipped to that territory from mills in northern New York. It is stated that the rates from the New York mills were not originally made on the official classification basis of fifth class, but were made with relation to a commodity rate of 18 cents which at the time was in effect from certain New England mill points to Chicago. When the rates from the Wisconsin mills were established to meet the competition of the New York mills the carriers from Wisconsin made Cincinnati the basing point for paper rates to central freight association territory. The rate to Cincinnati was made 15 cents, which was the rate from the New York mills to Cincinnati. To points east of Cincinnati the rate from the Wisconsin mills was graded up until it reached 18 cents at the Buffalo-Pittsburgh line, which is the eastern boundary of central freight association territory. The Cincinnati rate of 15 cents was made to apply to a large group of points extending as far north as Bay City and Saginaw, Mich., including Cleveland, Ohio, and Detroit, Mich., and as far west as the line of the Grand Rapids & Indiana Railway, which operates south from Grand Rapids, Mich. On and west of that line in central freight association territory the rate from the Wisconsin mills was made 14 cents. To St. Louis the rate from Kalamazoo is 14 cents and from the Wisconsin mills 16 cents. The greater density of tonnage and lower average rate per ton-mile in central freight association territory than in western trunk line territory is particularly referred to by the complainants as supporting their contention that the rates from Wisconsin give an unfair advantage to the Wisconsin producers.

The following table is a statement of the rates, in cents per 100 pounds, from Kalamazoo and the competing Wisconsin mills to representative points in central freight association territory and the excess of the rates from the Wisconsin mills over the rates from Kalamazoo:

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To—	From Wisconsin.	From Kalamazoo.	Excess of Wisconsin over Kalamazoo.
Buffalo.....	18	14	4
Pittsburgh.....	18	14	4
Wheeling.....	18	14	4
Charleston.....	20	15	5
Akron.....	15	12	3
Cleveland.....	15	11½	3½
Columbus.....	15	12	3
Lima.....	15	10	5
Dayton.....	15	11½	3½
Toledo.....	15	9	6
Detroit.....	15	9	6
Bay City.....	15	9	6
Grand Rapids.....	14	5	9
Fort Wayne.....	14	7	7
Marion.....	14	10	4
Indianapolis.....	14	10	4
South Bend.....	14	6½	7½
Mishawaka.....	14	6½	7½
Terre Haute.....	14	11	3
Cincinnati.....	15	12	3
Evansville.....	15	14	1
Louisville.....	16	13	3

The rates to points in central freight association territory hereinbefore referred to are those that were in effect at the time the complaint was filed and the hearing had. Some changes have since been made in these rates following the decision in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325.

At the hearing a representative of the Wisconsin mills referred to a suggested readjustment of rates from the Wisconsin mills and from mill points in New England and New York to central freight association territory. It was stated that the readjustment was satisfactory to a majority of manufacturers of paper and to the carriers interested in the transportation of that commodity from the various points involved. The proposed readjustment did not contemplate increases in the rates from the mills of complainant to central freight association points. It was proposed that the rates from Wisconsin mills to many points in central freight association territory should be increased 1½ cents per 100 pounds.

In *Official Classification Rates on Paper*, 38 I. C. C., 120, the carriers proposed the general application of sixth-class rates on printing paper and wrapping paper in official classification territory. No increases in the rates from Wisconsin to points in central freight association territory were proposed, however, nor did the evidence show the exact nature of the readjustment contemplated in the rates from the Wisconsin mills. That some increases in the rates from Wisconsin were necessary was conceded, and it was again stated that the rates from Wisconsin should bear some relation to those from northern New York. The general application of sixth-class rates, which we approved in the case cited, will probably result in greater increases in the rates from northern New York than were originally

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contemplated, and it is not improbable that a still further readjustment of the rates from Wisconsin will be required to eliminate the admitted inconsistencies in the rate structure. That the spread between the rates from the Michigan mills and the Wisconsin mills should be at least $1\frac{1}{2}$ cents per 100 pounds greater than at present is clearly shown of record, but we are unable to say, on the evidence now before us, what further changes in the rates, if any, should be made in the light of the general readjustment of rates on paper throughout official classification territory. The carriers concede that some readjustment is necessary, and we assume that it will be promptly made.

RATES TO POINTS IN WESTERN TRUNK LINE TERRITORY.

To points in western trunk line territory, including the Missouri River crossings, Omaha and Kansas City, the rates from the complainants' mills are made by combination of the rates to and from Chicago or the Mississippi River, whichever makes the lower aggregate through charge. Rates on paper are, as a matter of fact, usually based on Chicago. As already stated, the rates to Chicago are 9 cents per 100 pounds from Kalamazoo, Plainwell, and Otsego, and $8\frac{1}{2}$ cents from Vicksburg. The rate from Chicago to the Missouri River is 20 cents. The through rates from the complainants' mills to the Missouri River are therefore 29 cents from Kalamazoo, Plainwell, and Otsego, and $28\frac{1}{2}$ cents from Vicksburg. The rates from the Wisconsin mills are on the Chicago basis. These differences between the rates from the Wisconsin mills and the complainants' mills, measured by the amount of the rates from the complainants' mills to Chicago, are carried westward from the Missouri River into trans-Missouri territory, including Colorado common points, to points in Kansas, and to other western points.

The real basis of complaint as to these western rates is found in the maintenance from the Wisconsin mills to the Missouri River of the Chicago basis of rates and from the complainants' mills of the combination of rates to and from Chicago. It was urged on behalf of the defendants that the circumstances and conditions which made necessary and proper the establishment of the Chicago basis from the Wisconsin mills to the Missouri River are substantially different from those affecting traffic from points in central freight association territory to the same points, this difference consisting principally in the fact that certain of the carriers from the Wisconsin mills, namely, the Chicago & North Western Railway and Chicago, Milwaukee & St. Paul Railway, reach the Missouri River from some of the Wisconsin mills with their own rails and are therefore in position to establish, and have established, rates from those mills on the Chicago

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basis. This extension of the Chicago basis on traffic from these Wisconsin producing points to the Missouri River and beyond is not peculiar to paper, the same basis applying to substantially all traffic carried between the same points. Rates from central freight association territory points east of the Indiana-Illinois state line to the Missouri River and beyond have been considered in previous cases. *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 16 I. C. C., 56; 23 I. C. C., 195; *Mississippi River Case*, 28 I. C. C., 47; *Commercial Club of Terre Haute v. V. R. R. Co.*, 29 I. C. C., 383. The principle underlying the findings in those cases is equally applicable in this case.

As stated, no complaint is made of the rates on paper from the complainants' mills to eastern trunk line territory. In this connection it may be stated that in eastern trunk line territory the complainants have practically the same advantage over their Wisconsin competitors which in western trunk line territory the Wisconsin mills have over the complainants. In other words, to western trunk line territory the Wisconsin mills pay the Chicago rates, and the complainants' charges are the combination on Chicago, or 8½ and 9 cents above the Chicago rate, whereas to eastern trunk line territory the rates from the Wisconsin mills are 8½ cents per 100 pounds higher than from the complainants' mills. We are of opinion and find that the rates from complainants' mills to points in western trunk line territory and trans-Missouri territory are not shown to be unreasonable or unjustly discriminatory.

RATES TO OKLAHOMA POINTS.

To Oklahoma points through rates on paper are published from the complainants' mills, as well as other points in central freight association territory, and from the Wisconsin mills. The rate from the Wisconsin mills, which take the Chicago basis, to Oklahoma City, for instance, is 66 cents per 100 pounds; from the complainants' mills, 77 cents; from Dayton, 72 cents; and from St. Louis, 61 cents. In making these Oklahoma rates from all these mill points the regular fifth-class differential over St. Louis is maintained. This differential is 5 cents from Chicago territory and 16 cents from Detroit-Cleveland territory, the rates from which latter territory are applicable from the complainants' mills. The local rate on paper from the complainants' mills to Chicago is, as stated, 9 cents, and from the complainants' mills to St. Louis, 14 cents. It will therefore be seen that the rates from the complainants' mills to Oklahoma City, constructed by adding the fifth-class differentials above shown to the 61-cent rate from St. Louis, are higher by 2 cents per 100 pounds than the rates that would result from adding the local rates from the complainants' mills

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to Chicago and St. Louis, respectively, to the rates beyond those points. This situation should be corrected so that the through rates will not exceed the combinations of the intermediate rates to and from St. Louis and Chicago. Except in this respect, the rates to Oklahoma points are not shown to be unreasonable or unjustly discriminatory.

RATES TO LOUISIANA POINTS.

To New Orleans the rate from the Wisconsin mills is $3\frac{1}{2}$ cents less than the rate from Kalamazoo, these rates being $31\frac{1}{2}$ cents and 35 cents per 100 pounds, respectively. The rate from Dayton to New Orleans is 31 cents and from Chicago 33 cents. It appears that the usual basis of rates from the Wisconsin points to New Orleans is that which applies from St. Paul instead of that applicable from Chicago, which latter adjustment, as already shown, obtains from the Wisconsin mills to many of the points of destination here in issue.

The complainants suggest that on the basis of the per ton-mile earnings yielded by the rates from the Wisconsin mills to New Orleans the rates from their mills to New Orleans would not exceed 29 cents per 100 pounds. We find that a rate of $31\frac{1}{2}$ cents from the Wisconsin mills to New Orleans is unjustly prejudicial to complainants. The defendants should maintain rates for the future from Kalamazoo to New Orleans and other points taking the same rates that shall not exceed by more than 2 cents the rate contemporaneously maintained from the Wisconsin mills to the same point.

The rate on paper to Shreveport, La., is 69 cents per 100 pounds from both the complainants' mills and the Wisconsin mills. From Dayton the rate is 71 cents. On traffic to Shreveport rates from the Wisconsin mills are the same as apply from St. Paul, and the rates on paper from the Wisconsin mills are made on basis of the commodity differential of 9 cents per 100 pounds over the rate of 60 cents per 100 pounds from St. Louis to Shreveport. A commodity differential of 9 cents is also used in making the rates on paper to Shreveport from those of complainants' mills which are located at Kalamazoo, Otsego, and Plainwell, but on paper to Shreveport from mills located at Vicksburg the rate is made on the basis of the fifth-class differential over St. Louis of 16 cents. No justification appears from the record for making the rate higher from Vicksburg than from the other Michigan producing points, and the rate from Vicksburg should be readjusted accordingly. Otherwise the rates to Shreveport are not shown to be unreasonable or unjustly discriminatory.

Substantially no evidence is submitted with respect to the rates to Louisiana points other than Shreveport and New Orleans. Generally

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speaking, to points west of New Orleans and south of Shreveport in Louisiana the rates from the complainants' mills are the same as from the Wisconsin mills.

RATES TO NASHVILLE, TENN.

To Nashville, Tenn., the complainants state that their rate is the Ohio River combination of 28 cents per 100 pounds, whereas a joint through rate lower than the combination is published from the Wisconsin mills. From an examination of the tariffs on file with the Commission it appears that there is a joint through rate on printing and wrapping paper of $27\frac{1}{2}$ cents applicable from the Wisconsin mills to Nashville which seems to have been based upon the combination of 15 cents to Evansville, Ind., and $12\frac{1}{2}$ cents beyond. The combination rate of $28\frac{1}{2}$ cents which the complainants state applies from their mills to Nashville seems to be based on Cincinnati, the factors being 12 cents to Cincinnati and $16\frac{1}{2}$ cents beyond. It appears from our examination of the tariffs on file, however, that the lowest combination bases on Louisville, the factors of this combination being 13 cents to Louisville and $12\frac{1}{2}$ cents beyond. The rates from central freight association territory to the Ohio River crossings have been increased in connection with *The Five Per Cent case*, 31 I. C. C., 351, but no corresponding increase in the joint through rate from the Wisconsin mills has been made. The complainants state that by applying the per ton-mile revenue derived from the Wisconsin mills to Nashville to the haul from the Michigan mills their rate would be 18 cents. It was suggested by a representative of the Wisconsin mills that the joint through rate from those mills might well be canceled, leaving the traffic to move on the Ohio River combination. If the through rates are withdrawn it will result in leaving the rates to all southeastern points, including Nashville, from both the Wisconsin and Michigan mill points made on the same basis. We find that the through rates from the Wisconsin mills to Nashville should be withdrawn in accordance with the above suggestion.

RATES TO ILLINOIS AND MISSISSIPPI RIVER TERRITORY.

The complainants also refer to rates in what they designate as Illinois and Mississippi River territory, which they describe as being that section of country in the vicinity of the western boundary of central freight association territory and the eastern boundary of western trunk line territory, which is sometimes included for rate-making purposes in one of these territories and sometimes in the other. As illustrative of this relative adjustment between the complainants' mills and mills in Wisconsin and at Dayton, Ohio, they

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show that the rate to Streator, Ill., is 15 cents from the Wisconsin mills, 13 cents from the complainants' mills, and 12 cents from Dayton; to Milwaukee, 7½ cents from the Wisconsin mills, 11 cents from the complainants' mills, and 13 cents from Dayton; to St. Louis, 16 cents from the Wisconsin mills, 14 cents from the complainants' mills, and 13 cents from Dayton; and to Freeport, Ill., 10 cents from the Wisconsin mills and 17½ cents from the complainants' mills and from Dayton. The rate to Freeport from the complainants' mills has, since this complaint was filed, been reduced to 15½ cents. The same reduction has been made in the rate to Rock Island, another point in this territory referred to by complainants. The Rock Island rate was 19½ cents at the time the complaint was filed. The complainants suggest that upon the basis of the earnings derived by the carriers from the rate from the Wisconsin mills the rate from their mills to Rock Island would not exceed 13.3 cents. The rates to all points on the Mississippi River and to points intermediate in Illinois territory are now aligned to conform to our findings in the *Mississippi River Case*, 28 I. C. C., 47, and 29 I. C. C., 530, and we are unable to find on this record that they are unreasonable or unjustly prejudicial to the complainant.

LESS-THAN-CARLOAD RATES.

The record affords little evidence with regard to the less-than-carload rates of which complaint is made. Less-than-carload rates from the Wisconsin mills are shown to be made on a commodity basis lower than the class-rate basis, whereas it is stated that no less-than-carload commodity rates are published from the complainants' mills. The spread between the carload and less-than-carload rates in central freight association territory has been increased by the reduction from fifth to sixth class in the carload ratings resulting from the numerous exceptions to the classification referred to. The complainants do not appear to be primarily interested in the rates on less-than-carload traffic. Practically all less-than-carload shipments made by them are consolidated at Kalamazoo and move to Chicago, St. Louis, or other points at carload rates. This to a great extent is also true from the Wisconsin mills. We do not feel justified upon the facts shown in making a reduction in the less-than-carload rates.

CLASSIFICATION AND DESCRIPTION OF PAPER.

With respect to the classification of paper and the descriptions carried in the tariffs of the defendants, the contention of complainants is, in substance, that all paper should take the same classification ratings and be simply described as paper. In the western classi-

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fication the descriptions of paper are not the same as in official classification. This condition exists with respect to many commodities and is by no means confined to paper. It arises from the lack of a uniform classification. The suggestion that the present commodity descriptions should be abolished, and the rates on all kinds of paper graded on a valuation basis, was discussed at some length in *Official Classification Rates on Paper, supra*, in which the Commission concluded that the maintenance of a uniform basis of rates would effectively eliminate the inconsistencies in the rate structure resulting from the lack of a uniform description. We can not upon this record reach a different conclusion.

An order will issue requiring the defendants to establish and maintain the relation of rates from the complainants' mills and the Wisconsin mills, respectively, to New Orleans, suggested in the foregoing findings, and to make rates on paper from Vicksburg, Mich., to Shreveport, La., in like manner as the present rates to Shreveport from other Michigan points.

The disposition of this case was postponed pending the decision in *Official Classification Rates on Paper, supra*.

No. 7927.

R. W. ELDEN

v.

SOUTHERN PACIFIC COMPANY.

Submitted August 2, 1915. Decided March 16, 1916.

Rate of 30 cents per 100 pounds charged for the transportation of fertilizers from Mococo, Cal., to Medford, Central Point, Ashland, Talent, and Grants Pass, Oreg., not found to have been unreasonable. Complaint dismissed.

F. O. Hurt for complainant.

G. D. Squires for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in fertilizers at Central Point, Oreg. By complaint, filed April 19, 1915, he alleges that a rate of 30 cents per 100 pounds charged by defendant for the transportation of nine car-load shipments of fertilizers from Mococo, Cal., to Medford, Central Point, Ashland, Talent, and Grants Pass, Oreg., between October, 1913, and March, 1914, was unreasonable to the extent that it exceeded a rate of 25 cents per 100 pounds subsequently established. Reparation is asked.

All of the shipments were moved by defendant, and charges were collected by it at the tariff rate of 30 cents per 100 pounds. It had informed complainant before the shipments moved that a 25-cent rate would be published, but difficulties were encountered in getting out the tariffs, and the 25-cent rate did not become effective until May 15, 1914. Defendant advised the consignors by a letter dated October 28, 1913, that the 25-cent rate had not been published as promised. The consignors transmitted the letter to complainant, but the shipments were not stopped. We are asked to authorize refund on the shipments on the basis of a rate of 25 cents.

Defendant admitted that under the circumstances and conditions the rate assailed was unreasonable, but testified that the rates to the localities involved are highly competitive and are not on a normally reasonable level. On the other hand, it expressed willingness to make reparation. A mere willingness to pay reparation without evidence that the rate charged was unreasonable is not sufficient upon which to base an award of reparation.

We find that complainant has not sustained the allegations of the complaint, and an order of dismissal will be entered.

No. 7388.

TRAFFIC BUREAU OF SIOUX FALLS COMMERCIAL CLUB
v.
GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted May 15, 1915. Decided March 16, 1916.

Defendants' class rates from Duluth, Minn., and Superior, Wis., to Sioux Falls, S. Dak., not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

R. D. Springer for complainant.

G. R. Hall for Commercial Club of Duluth, intervener.

C. E. Childe for Traffic Bureau of Sioux City Commercial Club, intervener.

W. J. Buchanan for Minneapolis Civic & Commerce Association, intervener.

R. L. Kennedy, W. D. Burr, and J. F. Finerty, jr., for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an organization of persons, firms, and corporations, many of whom are shippers, in the city of Sioux Falls, S. Dak. By complaint, filed October 12, 1914, it alleges that defendants' class rates from the ports of Duluth, Minn., and Superior, Wis., to Sioux Falls, both as applied on local traffic and on rail-lake-and-rail traffic moving through those ports from points east thereof, are unreasonable and unjustly discriminatory. The complaint is formally against the rates on all classes of traffic, but complainant is particularly interested in the rates on the first five classes. The Great Northern Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter termed the Omaha, are the only carriers defendant. The Commercial Club of Duluth, the Minneapolis Civic & Commerce Association, of Minneapolis, and the Traffic Bureau of Sioux City Commercial Club, of Sioux City, Iowa, intervened, but introduced no evidence of importance.

The rates assailed, in cents per 100 pounds, are as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates	80	65	45	32	27	32	27	22	18½	16
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Sioux Falls is a city of from 20,000 to 25,000 population, in the southeastern part of South Dakota, near the Iowa and Minnesota boundary lines. It has ample railway facilities to and from near-by markets and its business concerns do a large business. It has grown rapidly in the last few years. It is about 340 miles from Duluth and Superior over the Great Northern, and about 410 miles over the Omaha. Complainant states, however, that it is hampered by its rate adjustment, and that its competitors, particularly St. Paul and Minneapolis, Minn., hereinafter called the twin cities, are able to dominate what complainant conceives to be properly Sioux Falls territory. The real object of the complaint is stated to be to secure a reduction in the rates from Duluth and thus to open that port as a gateway for the lake transportation of commodities from eastern territory to Sioux Falls.

The through rail-and-lake rates for the first five classes from New York City to Duluth, and the rail-lake-and-rail rates from New York City to Sioux Falls and to the cities alleged to be unduly preferred by lower rates from the east, are shown in the following table, rates stated in cents per 100 pounds. The rates stated to Omaha, Sioux City, Des Moines, Fort Dodge, and Sioux Falls are combination rates based on Mississippi River crossings. The rates to Mankato involve arbitraries over the rates to the twin cities. The rates to the twin cities are joint rates.

	Miles.	1	2	3	4	5
Duluth, Minn.....		62.0	54.0	41.0	30.0	25.0
New York to Mississippi River.....		78.0	68.0	53.0	37.0	31.0
Between rivers.....		55.0	41.0	32.0	24.0	20.0
Omaha, Nebr.....	1,502	133.0	109.0	85.0	61.0	51.0
New York to Mississippi River.....		78.0	68.0	53.0	37.0	31.0
Between rivers.....		55.0	41.0	32.0	24.0	20.0
Sioux City, Iowa.....	1,424	133.0	109.0	85.0	61.0	51.0
New York to Mississippi River.....		78.0	68.0	53.0	37.0	31.0
Mississippi River to Des Moines.....		34.8	27.8	20.9	16.6	12.6
Des Moines, Iowa.....	1,358	112.8	95.8	73.9	53.6	43.6
New York to Mississippi River.....		78.0	68.0	53.0	37.0	31.0
Mississippi River to Fort Dodge.....		41.2	31.7	23.7	19.3	14.9
Fort Dodge, Iowa.....	1,374	119.2	99.7	76.7	56.3	45.9
New York to twin cities.....		83.0	72.0	54.0	38.0	32.0
Arbitrary to Mankato.....		20.0	17.0	13.0	9.0	6.0
Mankato, Minn.....	1,238	103.0	89.0	67.0	47.0	38.0
Twin cities.....	1,152	83.0	72.0	54.0	38.0	32.0
New York to Mississippi River.....		78.0	68.0	53.0	37.0	31.0
Mississippi River to Sioux Falls.....		58.0	43.5	34.0	25.5	21.0
Sioux Falls.....	1,343	136.0	111.5	87.0	62.5	52.0

Complainant points out that the rates from Duluth and Chicago to Omaha are equal, but that, although the rates from Chicago to territory intermediate to Omaha are lower, Sioux Falls takes the same rates as Omaha from Duluth, notwithstanding the haul to Sioux Falls is 180 miles less than the haul to Omaha. The averages of the rates for the first five classes from Chicago, Ill., St. Louis, Mo., Peoria, Ill., and St. Paul, Minn., to points in Iowa, Michigan, Minnesota, Nebraska, Illinois, and North Dakota, and from Dubuque and Cedar Rapids, Iowa, and La Crosse, Wis., to Sioux Falls, for distances averaging 373 miles, are 61, 50, 38, 28, and 21 cents per 100 pounds, respectively. The state mileage scales of Minnesota, Wisconsin, Illinois, Iowa, and South Dakota give average rates, for 340 miles, on the first five classes, of 62.7, 49.3, 40.6, 30.5, and 24.2 cents. The differentials, St. Paul over Duluth, of the joint rates on the first five classes of rail-lake-and-rail traffic from the east are 21, 18, 13, 8, and 7 cents, respectively. The reduction of these differentials to a per mile rate basis and the construction of rates from Duluth to Sioux Falls on that basis would give a 48-cent scale. A like reduction and application of the differentials, Mankato over Duluth, would give a 58.3-cent scale. Combinations of rates from the east on St. Paul give aggregate rates to certain points to which complainant's membership, some of them west of Sioux Falls, that are lower than like combinations on Sioux Falls. Complainant suggests that Sioux Falls should have a 60-cent scale from Duluth, but concedes that a reduction of the rates assailed is not material, provided a proper relationship, particularly with the twin cities' rates, is observed. Complainant relies almost entirely upon relative distances. Relative traffic and transportation conditions are not shown.

Defendants show that the rates assailed are relatively lower than the rates from the twin cities to the same general territory, including Sioux Falls, prescribed in *Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 663; lower than the rates from Iowa points to practically all destinations west of the Missouri River, prescribed in *Iowa State Board Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193; *Id.*, 563; lower than the rates from St. Louis to points in Kansas, prescribed in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673; and lower than rates from Duluth to points in South Dakota and North Dakota for distances from Duluth approximately the same as the distance from Duluth to Sioux Falls.

Rates from Chicago to Missouri River points are affected by influences that do not affect the rates to Sioux Falls. To points short of the Missouri River they are made with relation to the Missouri River rates, and the existence of lower rates per mile

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from Chicago to the Missouri River and to Iowa cities taking rates graded with relation to the rates to the Missouri River does not at all prove that complainant's rates are unreasonable. The differentials cited, twin cities over Duluth, are the resultants of the rates prescribed in *Commerce Club of Duluth v. B. & O. R. R. Co.*, 27 I. C. C., 639. Their addition to the rates from the twin cities to Sioux Falls, prescribed in the *Minneapolis Civic & Commerce Assn. Case*, *supra*, would give the following rates from Duluth to Sioux Falls on the first five classes: 78, 65½, 47, 33½, and 27 cents; which rates, except the first-class rate, would be higher than complainant's present rates. The rates from the twin cities to Sioux Falls yield slightly more per ton-mile than the short-line rates from Duluth to Sioux Falls. The rates to the twin cities from the east result from competition through the ports of Duluth, Milwaukee, and Chicago, and, like the related rates to Mankato, would not be affected if defendants did not participate in them.

Complainant insists that Sioux Falls takes higher rates from Chicago than Sioux City takes because it is farther away, and that Sioux Falls accordingly is entitled to lower rates from Duluth because of its shorter distance. The relationship of the rates from Chicago to Sioux Falls and Sioux City was fixed in *Daniels v. C., R. I. & P. R. R. Co.*, 6 I. C. C., 458, and was not based entirely on relative distances, as appears from the following extract from our report, p. 484:

Other things being equal, it might well be held that the distance of Sioux Falls from Chicago would entitle it to rates from that point not materially different from those applied from Chicago to Sioux City. But the circumstances and conditions affecting the respective lines of transportation to these two towns appear to be unlike in some important particulars, and those differences are deemed sufficient—for the general reasons above suggested—to warrant us in allowing some difference in the rates now under consideration.

We find that complainant has not shown that the rates assailed are unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

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No. 7799.
A. H. SLOCOMB, JR.,
v.
CAROLINA RAILROAD COMPANY ET AL.

Submitted September 30, 1915. Decided March 16, 1916.

A carload of rosin shipped from Snow Hill, N. C., to New York, N. Y., found to have been misrouted. Reparation awarded.

A. H. Slocomb, jr., for complainant.

J. F. Dalton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture of naval stores at Fayetteville, N. C., under the name of the Independent Naval Stores Company. By complaint, filed February 27, 1915, he alleges that due to misrouting, the rate of 42 cents per 100 pounds charged by defendants for the transportation of a carload of rosin shipped from Snow Hill, N. C., to New York, N. Y., in May, 1913, was unreasonable. Reparation is asked.

The shipment weighed 40,260 pounds and moved: Carolina Railroad from Snow Hill to Kinston, N. C.; Norfolk Southern Railroad to Norfolk, Va.; New York, Philadelphia & Norfolk Railroad, Philadelphia, Baltimore & Washington Railroad, and Pennsylvania Railroad to destination. Complainant paid and bore charges in the sum of \$169.09, at a rate of 42 cents per 100 pounds. The joint sixth-class rate of 47 cents per 100 pounds was lawfully applicable and there is an outstanding undercharge of \$20.13.

Complainant instructed the agent of the initial carrier at Snow Hill to route the shipment by way of Norfolk and the Old Dominion Steamship Company. The agent prepared the bill of lading, inserting in it "Norfolk and Old." The shipment was delivered to the Norfolk Southern at Kinston on billing showing the same routing. The agent of the Norfolk Southern rebilled the shipment and omitted the routing specified. The rate applicable over the route desired by complainant was the joint sixth-class rate of 42 cents per 100 pounds, which exceeded the aggregate of intermediate rates contemporaneously in effect over that route of 28 cents per 100 pounds:

10 cents from Snow Hill to Kinston and 18 cents from Kinston to New York. The Norfolk Southern admits that the joint rate should not have exceeded the Kinston combination. Effective June 30, 1913, a joint through rate of 28 cents was established over that route, which rate is still in effect.

Complainant contends that the shipment was misrouted; that the rate in effect over the route specified was unreasonable to the extent that it exceeded 28 cents, and that it is entitled to reparation on that basis. The assistant general freight agent of the Norfolk Southern Railroad was the only witness who testified for defendants. He stated that the routing inserted in the bill of lading, and the billing on which the shipment was delivered to the Norfolk Southern at Kinston, was indefinite and amounted to no routing at all. But there is no evidence that the Norfolk Southern's agent at Kinston actually did not understand the routing shown. If he did not, it was his duty to obtain more definite routing instructions from the Carolina Railroad.

We find that the Norfolk Southern Railroad Company misrouted the shipment; that the rate applicable over the route the shipment should have moved was unreasonable to the extent that it exceeded 28 cents per 100 pounds; that complainant was damaged by the misrouting to the extent of the difference between the charges collected and the charges which would have accrued at the rate of 28 cents per 100 pounds, and that it is entitled to reparation from the Norfolk Southern Railroad Company in the sum of \$56.36, with interest from June 2, 1913. The collection of the undercharges described from complainant may be waived, but the Norfolk Southern Railroad Company should settle with its connections on the basis of the rate that was legally applicable over the route of movement.

An appropriate order will be entered.

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No. 7859.

STAR CLOTHING MANUFACTURING COMPANY
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted November 11, 1915. Decided March 16, 1916.

Rate charged for the transportation of cotton piece goods in less than carloads, originating at Clifton Heights, Pa., from St. Louis, Mo., to Jefferson City, Mo., not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

C. H. Rodehaver for complainant.

J. W. Allen for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of clothing, with its principal office at St. Louis, Mo. By complaint, filed March 27, 1915, it alleges that the rate of 17½ cents per 100 pounds charged by defendant for the transportation of two less-than-carload shipments of cotton piece goods from St. Louis to Jefferson City, Mo., in April, 1913, was unjust, unreasonable, and unjustly discriminatory to the extent that it exceeded 13 cents per 100 pounds. Reparation is asked. Claims of reparation based on additional shipments that had been presented to the Commission informally within two years after they accrued were added at the hearing.

The shipments originated at Clifton Heights, Pa. No joint rate was applicable from Clifton Heights. The rates to and from St. Louis were charged. The rate to St. Louis is not attacked. The rate of 17½ cents per 100 pounds charged for the transportation of the shipments from St. Louis to Jefferson City was a commodity rate applicable on numerous articles described as "clothing material," including "cotton fabrics, made wholly of cotton, in the original piece." The rate of 13 cents per 100 pounds, for which complainant asks, is said to be the aggregate of the intermediate rates to and from North Jefferson, Mo.; 9 cents from St. Louis to North Jefferson; 4 cents beyond.

The 9-cent component of this rate is a commodity rate applicable by way of defendant's line from St. Louis to Columbia and Moberly, 38 I. C. C.

Mo., on material used in the manufacture of boots and shoes, including, among other things, box toe canvas, bracing cloth, buckram, cheese-cloth, drills, and duck, when originating at points east of the Illinois-Indiana state line. North Jefferson is intermediate to Columbia and Moberly, but the 9-cent rate was not given intermediate application, and defendant's application for relief under the fourth section was not heard with the complaint. Defendant explains that the 9-cent rate was established in competition with the Wabash Railroad whose lines extend directly from St. Louis to Columbia and Moberly and afford a much shorter route; that it is an unreasonably low rate; that no traffic has moved under it; and that complainant suffered no damage from the maintenance of a rate to Columbia and Moberly applicable on material used in the manufacture of boots and shoes which was lower than the rate contemporaneously in effect to Jefferson City on clothing material, as the materials and the manufactured products did not compete.

The 4-cent rate from North Jefferson to Jefferson City, constituting the other component of the combination rate asked, is said to be a drayage charge, and is not filed with us. Jefferson City is situated on the south bank of the Missouri River, opposite North Jefferson. There is no rail connection between the two points, but defendant publishes through rates between St. Louis and Jefferson City and absorbs the expense of drayage transfers between Jefferson City and North Jefferson.

Defendant contends that the commodity rate of $17\frac{1}{2}$ cents per 100 pounds on clothing material from St. Louis to Jefferson City, which also applies on material used in the manufacture of boots, shoes, harness, and saddlery, is not excessive, and that in general it is satisfactory to the manufacturers of those commodities. It is intended to cover all materials used in the manufacture of the commodities named and is applicable on articles rated variously from class 1 to class 4, inclusive, western classification, which classification governs traffic between St. Louis and Jefferson City. Western classification rates cotton piece goods in boxes or bales, less than carloads (dry goods n. o. i. b. n.), first class, but exceptions to the classification apply the third-class rating on such shipments from St. Louis to Jefferson City. The first, second, third, and fourth class rates from St. Louis to Jefferson City were and are 45 cents, 36 cents, 28 cents, and $22\frac{1}{2}$ cents per 100 pounds, respectively.

We find the rate assailed is not shown to have been unreasonable or otherwise unlawful, and an order dismissing the complaint will be entered.

No. 7956.¹
VACHERIE CYPRESS COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted October 6, 1915. Decided March 16, 1916.

Carload of cypress laths transported from Vacherie, La., to Youngstown, Ohio, and carload of lumber transported from Plaquemine, La., to Washington C. H., Ohio, found to have been misrouted by the New Orleans, Texas & Mexico Railroad Company. Reparation awarded.

E. W. McKay for complainants.

Frank Koch for Texas & Pacific Railway Company.

M. L. Costley for Yazoo & Mississippi Railroad Company and Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Vacherie Cypress Company and the Louisiana Red Cypress Company, corporations engaged in the lumber business, with their principal offices at New Orleans, La. By complaints, filed April 26, 1915, they allege that due to misrouting the charges collected by defendants for the transportation of a carload of cypress laths from Vacherie, La., to Youngstown, Ohio, and a carload of cypress lumber from Plaquemine, La., to Washington C. H., Ohio, respectively, in July, 1912, were unreasonable. Reparation is asked. The claims were presented to the Commission informally May 13, 1914.

The shipment by the Vacherie Cypress Company weighed 34,000 pounds and was delivered to the Texas & Pacific Railway at Vacherie on July 12, 1912, consigned to the Ellwood Lumber Company at Youngstown, routed "c/o Big Four R. R. at Cincinnati and L. S. & M. S. R. R. delivery." The shipment by the Louisiana Red Cypress Company weighed 52,800 pounds and was delivered to the same defendant at Plaquemine on July 5, 1912, consigned to John R. Gobey & Company, Washington C. H., routed "via Cincinnati Penna Del'y." Both shipments moved: Texas & Pacific Railway and New Orleans, Texas & Mexico Railroad to Baton Rouge, La. The agent of the

¹ The proceeding also embraces complaint in No. 7956 (Sub-No. 1), Louisiana Red Cypress Company *v.* Texas & Pacific Railway Company et al.

New Orleans, Texas & Mexico at Baton Rouge changed the billing of both shipments and routed them through Mounds, Ill. The Vacherie Cypress Company paid and bore charges on its shipment in the sum of \$108.80, at a rate of 32 cents per 100 pounds, while the Louisiana Red Cypress Company paid and bore charges on the shipment which it made in the sum of \$153.12, at a rate of 29 cents per 100 pounds. The rates charged applied over the routes of movement but lower rates applied over the routes specified by complainants: 31 cents per 100 pounds on cypress laths from Vacherie to Youngstown; 27.5 cents per 100 pounds on cypress lumber from Plaquemine to Washington Court House.

We find that complainants made the shipments as described; that the shipments were misrouted by the New Orleans, Texas & Mexico Railroad Company; that complainants were damaged thereby to the extent of the difference between the charges paid and the charges that would have accrued if the shipments had been forwarded over the routes specified in the bills of lading; that the Vacherie Cypress Company is entitled to reparation from the New Orleans, Texas & Mexico Railroad Company in the sum of \$3.40, with interest from August 19, 1912, and that the Louisiana Red Cypress Company is entitled to reparation from the same carrier in the sum of \$7.92, with interest from August 7, 1912.

An order will be entered accordingly.

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No. 7981.

S. S. McCOLLOUGH & COMPANY

v.

GULF & SABINE RIVER RAILROAD COMPANY ET AL.

Submitted October 12, 1915. Decided March 16, 1916.

Certain shipments of cotton transported from Fullerton, La., to Galveston, Tex., found to have been misrouted by the Gulf & Sabine River Railroad Company. Reparation awarded.

E. C. Cottingham for complainants.

J. R. Christian for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are S. S. McCollough and W. A. Thornton, co-partners, engaged in mercantile business at Fullerton, La. By complaint, filed May 5, 1915, they allege that, due to misrouting, the charges collected by defendants for the transportation of 89 bales of cotton from Fullerton to Galveston, Tex., between October 14, 1913, and July 17, 1914, were unreasonable. Reparation is asked.

Fifteen shipments were made, aggregating 41,950 pounds. All were delivered to the Gulf & Sabine River Railroad at Fullerton with instructions to forward them over the cheapest route. They moved: Gulf & Sabine River Railroad to Nitram, La.; Lake Charles & Northern Railroad to Lake Charles, La.; Louisiana Western Railroad, Texas & New Orleans Railroad, and Galveston, Harrisburg & San Antonio Railway to destination. No joint through rate was in effect and charges were collected in the sum of \$411.11, at a combination rate of 98 cents per 100 pounds, applicable over the route of movement: 40 cents from Fullerton to Lake Charles; 30 cents from Lake Charles to New Orleans, La.; and 28 cents from New Orleans to Galveston. Complainants paid and bore the charges. A rate of 50 cents per bale from Fullerton to Nitram plus 45 cents per 100 pounds from Nitram to Galveston, applied contemporaneously by way of the Gulf & Sabine River Railroad to Nitram and the Santa Fe lines beyond.

We find that complainants made the shipments as described; that the Gulf & Sabine River Railroad Company misrouted them; that

complainants were damaged by the misrouting to the extent of the difference between the charges paid and the charges that would have accrued if the shipments had been forwarded over the route taking the lower rate described; and that they are entitled to reparation from the Gulf & Sabine River Railroad Company in the sum of \$177.83, with interest from August 27, 1914.

An appropriate order will be entered.

No. 7787.

UNITED STATES STEEL LOCK COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted July 13, 1915. Decided March 16, 1916.

Second-class rate applied by defendants to the transportation of iron door locks with bronze trimmings, and third-class rate applied to iron door locks, from Lyons, Iowa, to St. Louis, Mo., found to be unreasonable. Rates not in excess of fourth class, subject to Illinois classification, for the transportation from Lyons, Iowa, to St. Louis, Mo., of iron or steel locks with or without brass or bronze trimmings in straight or mixed carloads prescribed for the future. Reparation awarded.

F. W. Knoche for complainant.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation, was engaged in the manufacture of door locks, with its principal place of business at Clinton, Iowa. By complaint, filed February 26, 1915, it alleges that the second-class rate prescribed by Illinois classification and applied by defendants to the transportation of two carload shipments of locks from Lyons, Iowa, to St. Louis, Mo., in January and July, 1914, was unjust and unreasonable. Reparation is asked and the establishment of a carload rating of fourth class.

The shipments comprised 376 cases of iron door locks, 3 bundles of iron rods, and 59 cases of iron locks with bronze trimmings, aggregating 63,053 pounds. Charges were collected in the sum of

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\$218.79, at the second-class rate of 34.7 cents per 100 pounds. An additional carload shipment moved April 3, 1915, was proved at the hearing without objection, that consisted of 152 cases of iron locks, weighing 21,640 pounds, and 49 cases of iron locks with bronze trimmings, weighing 7,476 pounds, on which charges were collected in the sum of \$90.20 at the second-class rate of 37 cents per 100 pounds on the locks with bronze trimmings and at the third-class rate of 28.9 cents per 100 pounds on the iron locks.

It is stated of record that all the shipments moved over the Chicago, Milwaukee & St. Paul Railway and the Wabash Railroad. When the first two moved the second-class rate from Lyons to St. Louis over the Chicago, Milwaukee & St. Paul and the Wabash was 35.2 cents per 100 pounds. The rate charged, therefore, did not apply over the route traversed, but was the rate between the points in question over the Chicago, Milwaukee & St. Paul in connection with either the Chicago & Eastern Illinois Railroad, the Chicago, Peoria & St. Louis Railway, or the Illinois Central Railroad. The rates charged on the last shipment were the second and third class rates in effect by way of the Chicago, Milwaukee & St. Paul and the Wabash.

Shipments from Lyons to St. Louis are subject to Illinois classification, which provides no carload rating for door locks. Locks, iron or steel, in packages, are classified third class; locks not otherwise specified, in packages, second class. The fourth-class rate over the route of movement was 22 cents when the first two shipments moved, and 23.1 cents when the last shipment moved. The minimum weight prescribed by Illinois classification for articles classified fourth class is 24,000 pounds. Official classification rates iron or steel locks and locks not otherwise specified, which would include bronze-trimmed locks, fourth class, subject to a minimum of 30,000 pounds. Complainant ships from four to eight carloads annually and contends that carload ratings lower than the ratings applicable on less-than-carload shipments should be established; also that iron locks and door locks with brass or bronze trimmings should be rated the same, although the trimmed locks are somewhat more valuable.

Defendants admit that the iron locks in the first two shipments have been overcharged to the extent of the difference between the charges assessed at the second-class rate and the charges that would have accrued at the third-class rate. The chairman of the Western Classification Committee testified that his committee had before it a recommendation of the Committee on Uniform Classification for a fourth-class rating on iron and steel locks in carloads, but added that it was not proposed to include in the lower rating, either in straight or mixed carloads, bronze and brass trimmed locks, which

move in smaller volume, and are of higher value and involve greater transportation risk.

In *Atkinson-Williams Hardware Co. v. A., T. & S. F. Ry. Co.*, Docket No. 5007, unreported, we held that the second-class rating provided by western classification for door and window locks, door knobs, transom and window lifts, in straight and mixed carloads, was unreasonable from certain eastern points to Fort Smith, Ark. A fourth-class carload rating was prescribed for the future. The record before us discloses that no brass or bronze material was involved in the shipments referred to in that case, but we are not persuaded that iron or steel locks and iron or steel locks with brass or bronze trimmings should be rated differently. The difference in values is said not to be very great, and the higher class locks, so far as the shipments involved show, constitute only a small proportion of the entire carload movement.

We find that the rates assailed were unreasonable to the extent that they exceeded the fourth-class rate in effect when the shipments moved which we find reasonable; that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable, and that it is entitled to reparation in the sum of \$80.07, with interest from July 3, 1914, and in the additional sum of \$22.94, with interest from April 5, 1915. We further find that for the future defendants should establish and apply to the transportation of iron and steel locks and iron and steel locks with brass or bronze trimmings in straight or mixed carloads from Lyons to St. Louis, rates not in excess of the fourth-class rate subject to Illinois classification contemporaneously maintained. Nothing appears of record to warrant an increase in the minimum generally applicable on articles rated fourth class under Illinois classification and in the absence of evidence to the contrary 24,000 pounds must be deemed reasonable.

An appropriate order will be entered.

38 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 679.
IRON AND STEEL FROM PACIFIC COAST POINTS.

Submitted February 4, 1916. Decided March 31, 1916.

Proposed increased interstate rates on certain iron and steel articles from north Pacific coast points to points in Oregon, Washington, and Idaho found not justified. Schedules under suspension ordererd canceled.

H. A. Scandrett, A. C. Spencer, A. W. Hawkins, and J. F. Finerty for respondents.

Joseph N. Teal and William C. McCulloch for Portland Chamber of Commerce.

J. M. Fitzpatrick for Spokane Iron Works.

Wettrick, Anderson & Wettrick for Transportation Bureau of the New Seattle Chamber of Commerce.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This proceeding involves the propriety of proposed increased rates on certain iron and steel articles from north Pacific coast terminals to Spokane, Wash., and other points in the same general territory, published in schedules filed to become effective on July 15 and 17, 1915. Upon protests by interested shippers these schedules were suspended until May 12, 1916, pending investigation. Rates are stated in dollars and cents per 100 pounds.

Prior to April 25, 1913, the rate on structural iron and steel, the principal articles involved, from north Pacific coast terminals to Spokane and points taking the same rates was 50 cents, which is the fifth-class rate; and structural iron and steel is rated fifth class in the western classification. Fabrication in transit was then provided for at Missouri River points on shipments from certain eastern defined territories to points east of the Idaho and Washington state line, but was not allowed on shipments destined to points west of that line. In April, 1913, fabrication in transit was extended by certain of the northern lines to shipments from Pittsburgh, Pa., and other points in eastern territory in groups A and B destined to points west of the line mentioned, including Spokane and Spokane territory. At that time the rate to the north Pacific coast on these articles, fabricated or unfabricated, was 80 cents, and the rate to Spokane was \$1.08. Iron and steel articles were then being shipped

to the coast, fabricated at coast points, and reshipped to Spokane. In order to permit the coast fabricators to continue to compete at Spokane with eastern fabricators a commodity rate of 30 cents was established on structural iron and steel from the coast to Spokane. The total transportation charge on structural iron and steel from Pennsylvania to the coast, when fabricated and reshipped to Spokane, was therefore the sum of 80 cents and 30 cents, or \$1.10. If the fabrication occurred at Missouri River points the total charge was the sum of \$1.08, the rate to Spokane, and 1.5 cents for fabrication, or \$1.095. At that time, and during a period of 15 or 16 months after the 30-cent rate was established, the great bulk of the structural iron and steel from eastern territory to the Pacific coast moved all rail. With the opening of the Panama Canal in August, 1914, rates on these articles via water from the Atlantic to the Pacific coast were very greatly reduced, and fabricators on the Pacific coast made heavy shipments from the Atlantic seaboard by water. Some of these articles, after fabrication, were reshipped to Spokane on the 30-cent rate. Confronted apparently with a serious shrinkage in business to the Pacific coast by reason of the competition of boat lines operating through the Panama Canal, the transcontinental rail carriers sought and obtained authority from this Commission to reduce their rates on many commodities from eastern defined territories to Pacific coast and intermediate points.

In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, and 34 I. C. C., 13, we authorized the carriers to establish a rate of 55 cents on many iron and steel articles, including structural iron and steel, from Alabama points in group C and from groups D, E, and F to Pacific coast terminals. It was provided in the report and order in that case that the rates on such articles to intermediate points must not exceed 75 cents, 90 cents, \$1, and \$1.10 from the Missouri River, Chicago, Pittsburgh, and the Atlantic seaboard, respectively. It was also provided that in any instance in which the commodity rate to the Pacific coast plus 75 per cent of the local rate from the terminal eastward to destination amounted to less than the maximum above named, the lower rate should control. For example, the rate on structural iron and steel from Chicago to the coast has been 55 cents since July 15, 1915, and the rate from the coast to Spokane is 30 cents. The 55-cent rate to the coast plus 75 per cent of the 30-cent rate is 77.5 cents. This is the authorized rate to Spokane. The rate at present applied, however, is 85 cents. This creates a discrimination against Spokane which is undue and in violation of the order of the Commission. Shipments of structural iron move from the Pittsburgh district to New York on a rate of 16.9 cents. During the last half of the year 1914 and for a portion

of the year 1915 the rate via water from New York to north Pacific coast points varied from 25 to 30 cents. The total transportation charge, therefore, from Pittsburgh to New York, thence to north Pacific coast via water, and thence to Spokane was from 71.9 to 76.9 cents, as compared with the rate of \$1.08 which then applied, or with the rate of 85 cents which now applies, on direct rail shipments. For the purpose, as the respondents assert, of protecting their revenues through an endeavor to hold a larger percentage of the traffic to the all-rail routes to Spokane, and of establishing a more defensible relation between the rates on analogous iron articles, they are seeking in the schedules here under suspension to increase the rates from the coast to Spokane on structural iron and steel from 30 to 40 cents. Seventy-five per cent of the proposed rate of 40 cents on these commodities, used in connection with the 55-cent rate from Chicago, would make the direct rate to Spokane 85 cents. A 40-cent rate, used in connection with the rail-and-water rate from Pittsburgh to the Pacific coast as it stood in 1914 and the early part of 1915, would make the rate to Spokane by this route from 81.9 to 86.9 cents. Since February, 1915, however, the water rates have been materially increased until at the time of the hearing in this case a rate of 40 cents more nearly represented the water rate from New York to the Pacific coast than did the former 30-cent rate.

Under the present situation, with the Panama Canal temporarily unavailable and the enormous demand for ships in the European trade, it seems unlikely that in the near future any great amount of this traffic will move by water from the Atlantic seaboard to the Pacific coast at any rate less than 40 cents. Therefore, one of the grounds relied on by the carriers for the increase in this rate, namely, the protection of their revenues by such an adjustment of rates as would induce the direct movement of this traffic to Spokane, does not now exist.

The direct rate of 77.5 cents, Chicago to Spokane, authorized by the Commission, plus the fabricating charge of 1.5 cents, will produce a rate of 79 cents to that point. There is no present likelihood, so far as this record shows, of the establishment of any aggregate of rail-water-and-rail rates from iron-producing territory to Spokane that will divert any very substantial amount of traffic from the direct rail lines.

The second ground advanced by the carriers for the proposed increased rate is the fact that on certain iron articles which are also rated as fifth class in western classification there are no commodity rates from the coast to Spokane and the fifth-class rate of 50 cents applies. On other articles there is in effect a commodity rate of 40 cents, while on structural iron and steel the commodity rate is 30

88 I. C. C.

cents. It was said that a rate of 40 cents on structural iron and steel would be in the direction of an equalization of rates on these analogous commodities. The record does not disclose the volume of structural iron and steel as compared with the volume of other iron articles which move under the 40-cent or the 50-cent rate. The fact that there is a commodity rate on the articles in question lower than the rates on other iron articles rated fifth class is not of itself convincing that the rate in question is unduly low and should be increased. The 30-cent commodity rate is 60 per cent of the class rate, which would apply in the absence of a commodity rate. The maximum commodity rate on structural iron from the Missouri River to intermountain points authorized by this Commission in *Commodity Rates to Pacific Coast Terminals*, *supra*, is 56.4 per cent of the class rate. The maximum rate from Chicago is 61.2 per cent of the class rate; from Pittsburgh it is 63.7 per cent; and from New York, 65.9 per cent. The 30-cent commodity rate bears approximately the same proportion to the class rate to Spokane as the commodity rates from Missouri River, Chicago, Pittsburgh, and New York to intermountain points bear to the class rates applicable to the same points.

It was urged by protestants representing fabricators at coast points that the increase in this rate would very greatly impair their ability to distribute their products in Spokane and surrounding territory and result in serious curtailment of their business. It was urged by protestants representing Spokane that the increased rate would have the effect of widening the authorized disparity between the rates to Spokane and to the coast by 7.5 cents, and of creating thereby an undue discrimination against Spokane. Upon the whole record we are of the opinion and find that the carriers have not justified the proposed increased rates. The schedules under suspension must be canceled, and it will be so ordered.

33 I. C. C.

No. 7847.

DARRAGH COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 176.

Submitted October 21, 1915. Decided March 16, 1916.

Rates charged for the transportation of oats in carloads from Milburn, Okla., and corn chops in carloads from Council Bluffs, Iowa, to Aubrey, Ark., milled in transit at Little Rock, Ark., found to have been unreasonable to the extent that they exceeded the rates contemporaneously applicable on like traffic to Helena, Ark. Fourth section relief denied. Reparation awarded.

G. F. Williams for complainants.

G. E. Schnitzer for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Finley J. Darragh, Thomas A. Darragh, and F. Kramer Darragh, copartners, engaged in the grain business at Little Rock, Ark., under the firm name of Darragh Company. By complaint, filed March 22, 1915, they allege that the rates charged by defendants for the transportation of two carloads of grain and grain products from Council Bluffs, Iowa, and Milburn, Okla., to Aubrey, Ark., in July and August, 1913, were unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section of the act. Reparation is asked. That portion of Fourth Section Application No. 176 which seeks authority to continue through rates on grain and grain products from Council Bluffs and Milburn to Helena, Ark., lower than the rates to Aubrey and other intermediate points was heard with the complaint.

The shipments moved: Chicago, Rock Island & Pacific Railway to Wheatley, Ark; Missouri & North Arkansas Railroad beyond; and were milled in transit at Little Rock on the Rock Island. One shipment consisted of 40,000 pounds of oats in sacks from Milburn; the other of 32,000 pounds of oats in sacks from Milburn, and 6,000

pounds of corn chops in sacks from Council Bluffs. Charges were collected on the oats in the sum of \$176.40, at a rate of 16½ cents to Wheatley and 8 cents beyond. Charges were collected on the chops in the sum of \$15.60, at a rate of 18 cents to Wheatley and 8 cents beyond. Complainants contend that reasonable rates would not have exceeded the 16½-cent rate applicable from Milburn to Helena, Ark., and the 18-cent rate applicable from Council Bluffs to Helena.

From December 31, 1911, to November 21, 1913, defendants' tariffs carried rates of 16½ cents from Milburn and 18 cents from Council Bluffs to Helena, West Helena, North Lexa, Fargo, and Kensett, Ark., on the Missouri & North Arkansas Railroad, applicable by way of Wheatley, on oats and corn chops in straight or mixed carloads, milled in transit at Little Rock. The rate from Milburn was increased to 18½ cents on November 21, 1913, and the present rates are 18½ cents from Milburn and 18 cents from Council Bluffs. The tariffs in effect at the time of movement contained the following provision:

To any point of destination not indexed in this tariff, but situated between and next adjacent to two points of destination that are indexed and located on the same railroad or railway, and the rates to the two indexed destinations being applicable via the line on which the unindexed destination is located, the rate will be the same as the rate to the next more distant point that is indexed.

Aubrey is intermediate to Helena over the route of movement and is located between and next adjacent to Thomas and Rondo, Ark. Neither of these stations was indexed and the intermediate clause therefore did not provide the Helena rates on shipments to Aubrey. Defendants established joint rates to Aubrey and Rondo on July 6, 1914, the same as the rates to Helena, but continued higher rates to certain other intermediate points. Defendants offered no evidence in support of their fourth section application.

We find that the rates charged were unreasonable to the extent that they exceeded the rates contemporaneously applicable on like traffic from the points of origin involved to Helena; that complainants made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation in the sum of \$62.40, with interest from August 19, 1913. Fourth section relief will be denied.

An appropriate order will be entered.

33 I. C. C.

No. 7608.

COMMERCIAL EXCHANGE OF PHILADELPHIA

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted October 14, 1915. Decided January 24, 1916.

1. Charge of \$2 per car for service in connection with the reconsignment of carload shipments of grain, grain products, hay, and straw, stopped in transit at "hold" points and subsequently forwarded to destination, found to have been justified; but the same charge for service in connection with the diversion of similar shipments en route to "hold" points is found not to have been justified. Maximum charge of \$1 per car for the latter service prescribed.
2. Tariff provision purporting to give carrier option of forwarding cars to destination after accrual of \$5 demurrage charges disapproved.

R. D. Jenks and W. A. Glasgow, jr., for complainant.

W. L. Kinter, Douglas Swift, and S. C. Pratt for defendants.

C. J. Austin for New York Produce Exchange.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

By tariffs effective on or about December 1, 1914, the principal eastern trunk line railroads imposed a charge of \$2 per car for their service in connection with the diversion in transit, or the stopping at certain points, known as "hold" points, and the subsequent forwarding of interstate carload shipments of flour, grain, feed, hay, straw, and some other commodities. The complaint particularly concerns shipments of the commodities named. The shipments move from central freight association territory and points farther west, and are finally delivered at points in eastern Pennsylvania, New Jersey, New York, New England, and to some extent in the south. This service is designated by different carriers as "diversion" or "reconsignment." The freight is usually "slip billed" from its point of origin in the west to some point east of the hold point with instructions to hold at some designated hold point. The waybills are sent to the agent at the hold point. The use of a nominal destination is explained as a convenient method of facilitating divisions of revenue among the participating lines. The Pennsylvania lines, however, require the

cars to be billed directly to the hold points. In some cases the shipper is able to determine the final destination of a car in transit before it arrives at the hold point and is able to have it diverted before it reaches that point. This is known as diversion. If the shipper can not thus divert the car it is stopped at the hold point and switched with other cars similarly stopped to tracks provided for that purpose. When disposition order is received the car is segregated from others on the hold tracks, rebilled, and forwarded to destination. This is known as reconsignment.

These services originated about the year 1887, when certain shippers at Philadelphia, members of the organization now bringing complaint, requested carriers serving that city to provide for the holding of cars of flour and feed en route from the west, at some point or points in the vicinity of Philadelphia, in cases where the final destination had not been determined. The demand for the service grew out of the difficulties involved in dealing in carload shipments of commodities subject to sudden fluctuation in demand and price but secured from distant sources of supply. The purpose of the proposed arrangement was, therefore, to enable the Philadelphia distributor to serve his eastern customers more promptly, regularly, and economically than would be possible in ordering shipments direct from origin to final destination. Under certain circumstances former practices involved unnecessary transportation. For example, grain, hay, feed, and flour from western points were hauled to Philadelphia and sometimes reshipped back at local rates to points as far west as Harrisburg. In such cases the transportation service and cost to consumer were both greater than they would have been had it been possible to ship to the consumer direct or had the shipments been stopped and held at some point west of Harrisburg until purchasers were found. In other cases, although no saving in transportation service or charges could be effected, the stopping and subsequent forwarding of cars to points where needed was of great advantage in securing the prompt filling of orders, thus obviating the necessity of carrying larger stocks in order to meet sudden demands or to provide against the irregularity of deliveries incident to long hauls. The service enables the eastern dealer to order shipments from western points without previously determining their ultimate destination, and to find his customers and order cars forwarded to them wherever needed, without the necessity of taking the freight into storage and reshipping from storage points. The service is thus of special value to the small dealers who have inadequate storage facilities.

The benefits of the new service were at first restricted to members of the Philadelphia Commercial Exchange. No additional charge

was made by the carriers nor was any provision then made for the service in tariffs. This condition continued until the passage of the Hepburn amendment in 1906 which compelled the publication of tariffs covering all services rendered by the carriers. As published in 1906 the tariff imposed no charge for reconsignments from hold points if made within 48 hours after the arrival of cars. According to the testimony, this legislation drew attention of the carriers more critically to the service and an effort was made to impose a charge thereon. In 1907 tariffs were accordingly filed by the trunk lines, assessing a charge of \$2 per car for reconsigning all cars from hold points. After a few months these tariffs were superseded by others providing that the charge would not be made if the reconsigning order were received within 24 hours prior to the arrival of the car. In 1910 the rule was further relaxed by permitting reconsignment without charge when orders were received within 24 hours after the arrival of the car. By amendment of the tariff in 1912, Sundays and legal holidays were excluded from the 24-hour period, and in 1913 it was further provided that the free period should be counted from the first 7 a. m. after the arrival of the car at the hold point. These tariffs were in turn superseded by the tariffs now under attack. The changes here detailed relate to the tariffs of the Delaware, Lackawanna & Western, but the testimony shows that all of the interested lines had a substantially similar experience. The New York Central, however, did not establish the reconsigning service from hold points until 1908.

The successive enlargements of the service since 1907 are said to be due to similar measures taken by competing central freight association roads. The number of hold points had also been increased from time to time and the service extended to a constantly increasing number of shippers. During the year 1914 about 15,500 cars were handled under this arrangement at Lyons, N. Y., alone. At present the principal hold points are Altoona and Renovo, Pa., on the Pennsylvania; Sayre, Pa., on the Lehigh Valley; Evitts Creek, Md., on the Baltimore & Ohio; Lyons, N. Y., on the New York Central; Elmira and Binghamton, N. Y., and Port Morris, N. J., on the Delaware, Lackawanna & Western; Jenkintown, Pa., on the Philadelphia & Reading; and Oneonta, N. Y., on the Delaware & Hudson. There are other hold points less used.

The defendants described the services in considerable detail. On the Pennsylvania lines, for example, upon receipt of waybills covering cars en route, the agent at the hold point makes reports of such waybills to the general freight agent. If no reconsigning order is received by the agent before the arrival of cars, he reports such arrival to his general freight agent and a copy of this report is sent to the carrier's freight solicitor at Philadelphia, who communicates

with the shipping dealer. In addition, all cars arriving between 11 p. m. on one day and 3 p. m. the next day are reported daily by telephone or telegraph to the freight solicitor. A report of cars reconsigned is made to the general freight agent and to the superintendent of freight transportation. The agent is required to keep records of instructions received by telephone and a special demurrage record of cars received for reconsignment. Special bills are made for demurrage and reconsigning charges assessed at hold points. Arrangements must be made for the collection of such charges at stations where deliveries are finally made. None of these services are required in the case of cars moving direct from origin to final destination.

Defendants testified that these services cause delays to equipment. A witness for the Pennsylvania lines stated that at Renovo during the month of October, 1914, out of a total of 469 cars reconsigned, 232 were subject to no delay and the remaining 237 were delayed a total of 918 days, an average of about 3.4 days per car. At Altoona during November, 1914, of 770 cars reconsigned, 495 were subject to no delay, and the remaining 275 were delayed 908 days and 16 hours, an average of 3 days and 7 hours per car. For the month of March, 1914, the average detention of all cars diverted or reconsigned at points on the Pennsylvania lines east of Pittsburgh and Buffalo was 2.1 days. Conditions on other roads are similar. No demurrage charge is assessed for the first day after arrival of cars at hold points. This allowance is in addition to the 48 hours allowed for the release of cars at ultimate destination.

The operation of the new rule has had a marked effect in reducing the number of cars reconsigned at hold points. During the month of May, 1914, 859 cars were diverted or reconsigned at Altoona, as against 111 during May, 1915. However, the general business had decreased about 10 per cent. For the first five months of 1915, 1,793 reconsignments and diversions were performed at that point, as against 5,280 during the first five months of 1914. Complete statistics are not available. This reduction is not due to decreased movement of the commodities, but largely to the substitution of direct shipping. As indicative of the present practice, a dealer testified that when he received advice of the new rule he had 50 to 100 cars of grain in transit from western points, ordered to Altoona for reconsignment. He at once wired the shippers at points of origin to have the cars sent direct to ultimate destination, and has not since ordered any cars to hold points. Consumers are also ordering direct shipments without dealing through brokers. Complainants' witnesses testified that the gross profit on grain, flour, and feed ranges from \$5 to \$10 per carload, and that the reconsigning charge of \$2 takes

such a large share of this profit as to be practically prohibitive. The charge can not ordinarily be passed on to the consumer, who, rather than assume it, would in most cases prefer to order direct. No consumer testified at the hearing, but dealers expressed the opinion that the charge of \$2 would have the effect of reducing the use of western products, thus entailing loss of tonnage to the carriers. The efforts of the distributors in extending their business, they claim, have been largely instrumental in developing the use of these products by eastern consumers.

The Commission has repeatedly declared that the service of reconsignment or diversion is beneficial and is not only proper but may be required of the carriers. The function of reconsignment as a transportation service was thus stated in *Detroit Traffic Assn. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 257, 259:

The primary economic advantage of reconsignment is found in the increase in the fluidity and regularity of the movement of commodities; there is an important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, celerity of movement is increased, the direction of commodities to the point of most active demand is facilitated. In other words, reconsignment increases the efficiency of transportation facilities in performing their most important function of bringing together supply and demand. The shipper of perishable products is enabled to divert his shipment from a market already overstocked, thus often converting a prospective loss into a gain; he is enabled to take advantage of his latest possible information as to market conditions. Similar advantages are seen in the movement of lumber and grain and other commodities of universal necessity.

In the same opinion we said further, 262:

The reconsignment privilege involves extra labor in handling and in clerical work on the part of the carrier, and it is an established principle that the carrier is entitled to repayment of the cost of the service, together with a reasonable profit on that cost.

Similar declarations as to the benefit of the service and the carrier's right to compensation therefor have been made in *Beekman Lumber Co. v. K. C. S. Ry. Co.*, 17 I. C. C., 86; *The Detroit Reconsigning Case*, 25 I. C. C., 392; *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; *Charles Becker v. P. M. R. R. Co.*, 28 I. C. C., 645; and *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 523. In the latter case we said, 528:

In no case has the Commission condemned reconsignment as a service. The abuse and not the reasonable use of the practice has been the subject of criticism. If granted, subject to such restrictions as may be necessary to prevent the abuses to which the practice is susceptible and conditioned upon the payment of a reasonable charge for the additional labor cost and liability which the service imposes upon the carriers, there appear to be no substantial reasons for apprehension that the modification of the present rules of these defendants to the extent of permitting reconsignment on basis of the through rate will be attended with injurious results.

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Complainant contends: (1) That the imposition of the reconsigning charge is in effect an increase of the transportation charge which, under the law, must be justified by the carriers, and that such justification requires the consideration of the reasonableness of the charge for the entire service, including the line haul. (2) If it be held that the charge for the reconsigning service may be separately considered, the carriers have not shown that the charge of \$2 is a reasonable one, either for the reconsigning of cars from the hold points or for their diversion where orders are received before the cars reach the hold point.

In support of the first contention, it is claimed that the service here in question has long been provided by the carriers under the through rate and must be presumed to be covered thereby. Complainant cites the Commission's decision in *Car Spotting Charges*, 34 I. C. C., 609, in which we said:

We have never intended to suggest that an additional charge would be proper for services which, by long-continued general custom and usage, have been treated as covered by the line-haul rate;

also our holding in *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47, in which we held:

Where a terminal service has heretofore been treated by the carriers as a part of the transportation service covered by the freight rate and regularly performed by them they may not now segregate that service and assign to it a separate charge without taking into consideration, in order to justify such charge, the entire through service of which it forms a part and the compensation heretofore received for such through service;

and an expression in our decision in *Rates in Chicago Switching District*, 34 I. C. C., 234:

For each rate a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point the delivery at that point is in no sense a "free service." The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.

All of these findings, either expressly or by direct implication, concern terminal services incident to the fulfillment of the carrier's legal obligation in receiving or delivering freight. The service we are now considering originated at a time when the carriers made a practice of granting special privileges to favored shippers, in various forms, and the testimony shows that in this case the special service given was a privilege confined to a few beneficiaries. It had nothing to do with the legal obligation of common carriers to receive, convey, and deliver freight, and there is no evidence that the service was

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presumed to be compensated in the rates. On the contrary the evidence negatives such a presumption. It was recognized as a service that required special tariff provision. A charge was for a time imposed, but competition caused its withdrawal. While we have held that the service of reconsignment is one that may be required of carriers we have uniformly held that carriers may properly impose a charge therefor, in addition to the through rate, sufficient to cover the cost and a reasonable profit. We do not think that the past practices of the carriers in connection with this service should now estop them from imposing a charge therefor, nor should the imposition of such charge obligate them to justify the through rates covering the receipt, conveyance, and delivery of the freight. It is clear that without such charge, two shipments of the same commodity, originating at the same point, traveling over the same rails, and delivered at the same platform, are given service materially different in amount and cost and of substantially different value to the respective shippers. This extra service justifies an extra charge.

We now come to a consideration of the reasonableness of that charge. Although the defendants did not submit testimony showing the cost of these services, they were unanimous in expressing the opinion that it is in excess of \$2 per car. They state that the services in connection with the diversion and reconsignment of cars are so intermingled with other services rendered by the same facilities and the same employees that a segregation of the particular costs here involved is impracticable. They therefore rest their conclusion upon comparisons with analogous services and the charges therefor. The general freight agent of the Delaware, Lackawanna & Western testified that the average switching charge on that road is more than \$4, and expressed the opinion that the reconsigning service is fairly comparable with the milling-in-transit service, for which the minimum charge is \$3 per car. Where the cars reach the hold points and are switched to and from the hold tracks, the carriers estimate that the switching costs alone exceed \$2 per car. If there are many cars on track, the switching service necessary in segregating particular cars for forwarding is of course considerable, but varies greatly. Where diversion orders are received in time to obviate switching to hold tracks, much of the clerical and accounting expense is nevertheless incurred, and, in defendants' opinion, justifies the charge.

Complainant insists that the evidence of the cost of the service is insufficient to serve as the basis for a finding in this respect. The record suggests that the carriers have not used the effort to ascertain the cost of this service that would be justified by the importance and value of this information. The time has arrived when carriers can not afford to treat with indifference the cost of the services which

they perform. Nevertheless, we recognize the fact that time will be required to deal with the problems involved, and for the present we must proceed with the best evidence available. We have little difficulty in concluding that the charge of \$2 per car for reconsignment requiring switching to and from hold tracks is not excessive. The evidence does not disclose whether or not a scheme of graduated charges, based in part upon the number and extent of the switching movements required, would be practicable, but there can be no doubt of its justice.

When cars ordered to hold points are diverted before reaching such points, the service and expense, as a rule, are materially less. The largest items of expense in the reconsignment service appear to be those caused by switching and the detention of equipment. Both of these items are either absent or are usually much less in the expense of diversion. It is not unusual for carriers to observe this distinction in their tariffs. *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, *supra*. The defendant Pennsylvania Railroad Company, during the period from May 1, 1909, to June 15, 1910, charged \$2 per car for reconsigning from hold points, but imposed no charge for diverting cars en route. However, we are of the opinion and so find that the defendants may properly make a maximum charge of \$1 per car, in addition to the through rate, for the diversion of cars as to which diversion orders are received before their arrival at hold points. The charge of \$2 per car for such service has not been justified.

The defendants direct attention to the fact that their tariffs provide for diversion and reconsignment at points other than hold points, and that the charge for diversion en route is \$2 per car, and for reconsignment after the car has reached its billed destination the charge is \$5 per car. This general diversion charge became effective December 1, 1914, but the general reconsignment charge had been in effect previously; neither is in issue in this proceeding.

Complainant points to the fact that the defendants, while imposing a charge for reconsigning shipments of certain commodities at hold points, are at the same time continuing free consignment of other commodities at certain other points. Free reconsignment of north-bound fruits and vegetables is permitted at Potomac Yards, Va., under a tariff issued by the Pennsylvania in behalf of the Washington Southern Railway. This is done in recognition of the competition of southern lines which have similar provisions and are not parties to this record. Under certain circumstances lake shipments of grain received by the defendants through the port of Buffalo, and shipments of coal and coke, are also granted free diversion. There is no commodity discrimination shown, and it is unnecessary to pass upon the propriety of those practices in this case.

The complainant calls the attention of the Commission to a provision in the tariff of the Lehigh Valley Railroad Company, whereby that carrier reserves the option of sending cars to original destination without any previous notice to consignees after \$5 per car demurrage has accrued at holding point. The witness for that defendant explained that the purpose of this provision was to enable the carrier to relieve its facilities in cases where no reconsigning order is received. He knew of no instance in which the option had been exercised. In its present form the provision gives the carrier opportunity to discriminate between shippers, and we are of the opinion that it should be withdrawn or amended.

In view of the general advantages of the reconsignment service, including the particular service here in question, we should examine with great care any charge or other provision that might have a tendency to deprive the public of those advantages. We do not believe that the charge here found justified will have such an effect. The fact that a shipper was able to divert to ultimate destination a large number of cars in transit, and the further fact that shippers are now ordering direct, afford ground for the belief that formerly the privilege was used unnecessarily; that many shipments billed to hold points might as well have been billed direct to destination; and that under the present rule the reconsignment service is still used in cases where such use is of substantial benefit. However that may be, it is clear that the imposition of a reasonable charge has been justified.

An order will be entered in conformity with these findings.

HARLAN, *Commissioner*, concurring:

Reconsignment and diversion are examples of what are described in the *Industrial Railways Case*, 29 I. C. C., 212, and in *The Five Per Cent Case*, 31 I. C. C., 350, as special services for which the carriers should make a charge; and, although not so stated in the foregoing report of the Commission, the charges for those services here under consideration were established by the defendant carriers, as the record shows, in conformity with the Commission's suggestions in the latter proceeding. In both cases it was held that every service rendered by a carrier should be made to contribute reasonably to its earnings; and in the application of this principle by the Commission in this case I fully concur. It is indeed to be regretted, in the general public interest, that the constructive course respecting such matters, pointed out in *The Five Per Cent Case*, has not had more definite support by the Commission in other subsequent proceedings, fully heard upon carefully prepared records involving measures taken by the carriers to conserve their revenues in the manner recommended by the Commission itself in that case.

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It is axiomatic, although unfortunately not always the actual practice, that a shipper receiving a service should pay for it. But it is equally fundamental that the carrier performing the service should charge for it. A railroad can not turn a wheel without expense, and the cost of every service, generally speaking, should be placed where it belongs, namely, upon the shipper that enjoys its benefits. This economic principle, accepted as sound by industry in general, must sooner or later be definitely accepted also in the industry of transportation, and must be firmly, rigidly, and amply enforced by this Commission when dealing with the many forms of special services which the carriers have been offering to a few shippers without charge, while spreading the cost, through the rates, over the general mass of shippers. A complete and ultimate analysis doubtless would show that the cost of reconsignment and diversion to these defendants has been in excess of their charges here under consideration. But, however that may be, those services, along with others falling in the same class, are of substantial value to the comparatively few shippers that require them, and when performed by the carriers without charge, in addition to the rate, as many such services still are, become transportation concessions that are equivalent to money rebates; and shippers in general, although they neither receive nor require such services, are nevertheless compelled, in the freight rates they pay, to contribute to the cost of what is done for others.

Until a reasonable charge, in addition to the freight rate, is imposed for every special service, and by this I mean services not incident to the usual or ordinary transportation required by the mass of shippers, the integrity of the rate structure of this country will be seriously impaired by inequalities, discriminations, and other illegalities prohibited by the regulating statute. Such concessions and irregularities, referred to in both reports in *The Five Per Cent Case* and in other reports as well, are often difficult of correction by the carriers without our aid, even when they desire to correct them, as some of them doubtless do. When a carrier, influenced by traffic considerations, has once granted a transportation concession in the form of free services and the traffic results flowing from it are substantial and desirable, the carrier, rather than risk the loss of the traffic by imposing a charge, is apt to continue the irregularity. On the other hand, shippers who have once received such a special advantage in service without charge are reluctant to have a charge imposed. The case before us is illustrative. Notwithstanding the cost to the defendant carriers of reconsignment and diversion and the value of these services to the complaining interests, the latter are here protesting against a charge. The service of reconsignment is still being performed elsewhere by these carriers without charge, and it

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is well known that many similar services are being furnished by other carriers without charge. Knowing, as we do, that such irregularities continue to exist in the rate structure of the country, it has always been my thought that the law imposes upon us the duty of actively taking steps to correct them. The elimination of such free services was referred to in the second report of *The Five Per Cent Case* as a constructive work that ought to be carried forward without interruption for the purpose of conserving and augmenting the net revenues of the carriers. Although the question of revenues may not now be so acute with the carriers as it was some months ago, the duty of removing the unlawful preferences that grow out of such practices is none the less urgent. And therefore, unless the Commission itself affirmatively and fearlessly enters upon the work outlined by it in *The Five Per Cent Case* the transportation service of this country will not be clean and free from such inequities and wrongs. To hold merely that a particular rate was intended to include a special service of this nature, even if such a finding were justified by the history of the rate, a conclusion I have not been able to concede upon the testimony adduced in any of these cases that have been before us; simply admits the injustice without correcting it, when it also appears that the mass of shippers paying that rate do not require or enjoy the benefit of the service.

With respect to the specific charges now exacted by these defendants for services long performed by them for a few shippers without charge it remains only to be said that while reconsignment doubtless may justify a higher charge than diversion, nevertheless the \$2 charge now imposed by the carrier for the latter service is not excessive in my judgment; to restrict the charge to \$1, as here is done by the Commission, does not in my view adequately measure the cost or the value of the service.

CLEMENTS, *Commissioner*, concurring:

Agreeing as I do to the report and decision of the Commission in this case, I would find no occasion to separately comment thereon except for repeated expressions in the above and other concurring as well as dissenting papers in criticism of the action of the Commission with reference to what was said in its report in *The Five Per Cent Case*. These expressions seem to proceed upon the idea that the Commission is frequently failing to give "definite support" to an alleged "constructive course respecting * * * matters pointed out" in that case. It is said that—

reconsignment and diversion are examples of what are described in the *Industrial Railways Case* * * * and in *The Five Per Cent Case* * * * as special services for which the carriers should make a charge; and, although

not so stated in the foregoing report of the Commission, the charges for those services here under consideration were established by the defendant carriers * * * in conformity with the Commission's suggestions in the latter proceeding.

There is a line of cases in which the Commission, before its report in that case, held that carriers were entitled to reasonable compensation for special services in addition to the line-haul service of transportation. Among these are the following holdings as therein stated:

Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only permitted by them under prescribed terms and conditions. *Diamond Mills v. B. & M. R. R. Co.*, 9 I. C. C., 311, decided November 17, 1902.-

Stopping a commodity in transit for treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of the law, can not demand as a matter of lawful right; but carriers may not unjustly discriminate between markets or individuals in the granting of such privileges.

In allowing the privilege of reconsigning hay at East St. Louis to southern destinations defendants are entitled to charge for such privilege what it actually costs them; * * *. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.*, 11 I. C. C., 90, decided May 15, 1905.¹

Testimony was also introduced by carriers describing the special facilities required for handling the ore and the difficulties occasioned by this traffic. Emphasis was laid on the fact that it was customary under certain conditions to haul slag from the furnaces free of charge when consigned for railroad use or waste. It was stated that formerly the slag was hard and could be used for ballast, but that in recent years it has been turned out by the furnaces in granulated form resembling coarse sand, rendering it undesirable as ballast, although it can be used for filling. Some furnaces dump their own slag, and to some extent it is used commercially. The exact amount of free hauling done by the railroads for a given amount of ore traffic does not appear from the record. In the oral argument the matter of slag was not mentioned. It is an independent service for which a separate and distinct charge should be made. *Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co.*, 27 I. C. C., 173, decided May 29, 1913.

In each of these cases there was an investigation and full hearing as to the reasonableness of the rates involved, as required by the statute, without previous suggestions of the Commission as to their propriety. The decisions in these cited cases more definitely support the action of the Commission in the case before us than do the suggestions in *The Five Per Cent Case*, because they were made upon a record of investigation and full hearing upon specific issues. The suggestions in the latter case were general and not made upon a full

¹ In this case it was held by the Supreme Court that the carriers were entitled to a reasonable profit in addition to the cost of performing the service, and the case was finally disposed of on that basis.

investigation and hearing with reference to the specific matters to which they referred.

It is my view that the only question lawfully before the Commission for decision in *The Five Per Cent Case* was the reasonableness of the proposed increased rates there under suspension. If this view is correct, the various suggestions contained in the report in that case were at most in the nature of *obiter dicta*. In any event I submit that the proposition can not be maintained that tariffs filed in consequence of those suggestions proposing new or increased charges or rates for what may be alleged to be special or additional services have any different standing under the law than like tariffs filed without reference to any suggestions contained in the Commission's report in that case. They are all subject to suspension and investigation, or, if not suspended, subject to complaint; and in either case the duty is imposed upon the Commission to investigate and determine their reasonableness upon the record made thereon without any tinge or degree of prejudgment.

Since the decision in *The Five Per Cent Case* we have been frequently called upon to pass upon the reasonableness of proposed rates and charges for alleged special services, or services in addition to the line transportation involved, said to be responsive to the suggestions contained in our report in that case. In each case, however, we have obeyed the command of the statute and have had an investigation and full hearing and have disposed of the matters involved upon the facts thus developed. We have allowed the new or increased charges in some instances and denied them in others, endeavoring to act under the rule of reasonableness as applied to the facts in each case, as by law required. In some cases we have been satisfied from the evidence of record that long established rates for the transportation were intended to and did cover ancillary services in connection with the main-line haul, such as spotting of cars within fixed limits, and that therefore such ancillary services covered by the tariffs for the whole service were not being performed free but were compensated for in the tariff rates for the combined or total service. To allow an added charge for part of the service in such a case would be to approve a double charge therefor. The suggestions and observations contained in the report in *The Five Per Cent Case* afford no justification for such action.

I submit that the Commission can not lawfully ignore the proposition that, whatever the service or the charge proposed therefor, parties complainant or protestant are entitled to be heard with respect to the reasonableness thereof, which can not be predetermined, but must be decided only after investigation and full hearing. If the

suggestions in *The Five Per Cent Case* as to what the carriers might or should do in respect to various matters, other than as to the definitely proposed increased rates, be sought to be justified upon an order of the Commission for an investigation instituted by it as to the question of the carriers' need of greater revenue and the means by which the same might be increased, this, in my view, demonstrates the impropriety of such an investigation other than in the proceeding in which such specific rates are involved; because any conclusion, however tentative and even though expressed in the form of suggestions, is necessarily in some degree a predetermination of the question which in more concrete form must later be definitely dealt with. In such a case it can not be safely affirmed that the final decision as to the reasonableness of any rate or charge proposed in response to such general suggestions has not been prejudiced by preconceived impressions acquired in the general inquiry which relates only to one of the matters pertinent to the ultimate question.

It also seems proper to direct attention to the second or supplemental report of the Commission in the *Industrial Railways Case* wherein cognizance was taken of the decision of the Supreme Court of the United States in the *Tap Line Case* announced subsequently to the issuance of the report in *The Five Per Cent Case*.

It seems hardly necessary to say that in this expression of my views I do not question the authority and affirmative duty of the Commission to proceed in such manner as to ascertain and uproot any practices of unjust discrimination, whether accomplished by free services not authorized by statute, excessive allowances or divisions, or otherwise.

I am, however, unable to understand how we can assume to know that "the rate structure of this country" is full of the "inequalities, discriminations, and other illegalities prohibited by the regulating statute" except as they are from time to time definitely ascertained by proper inquiry.

It is, perhaps, too much to expect that the time will come when the members of a tribunal will in no case differ as to what is proven by a record or whether a given state of facts once established proves a violation of law.

Referring to the criticisms directed to the action of the Commission, that "unless the Commission itself affirmatively and fearlessly enters upon the work outlined by it in *The Five Per Cent Case* the transportation service of this country will not be clean and free from such inequities and wrongs," I venture to suggest that divergence of opinion upon questions either of law or fact does not justify the imputation of a lack of fearlessness in the performance of duty. To be sure, there is a fear of base quality that deters from duty and

which, therefore, should find no place in our thoughts. The fear of doing wrong is of a different quality; it is akin to the fear of God; it should constantly be before our eyes; it tends to prevent injustice by hasty, ill-considered, or arbitrary action. A tribunal invested with such broad powers as those of this Commission, and whose findings of fact upon a record that will support them are practically final, involving, as they do, so many interests, great and small, individual and public, should ever have before it the fear of doing wrong.

I am requested by COMMISSIONER CLARK to state that he concurs in these views.

No. 7944.

J. W. TEASDALE & COMPANY

v.

VIRGINIA & SOUTHWESTERN RAILWAY COMPANY
ET AL.

Submitted November 12, 1915. Decided March 20, 1916.

Rate charged for the transportation of dried apples in carloads from Rogersville, Tenn., to Bristol, Va., there reconsigned to Chicago, Ill., found not to have been unreasonable. Complaint dismissed.

Charles Rippin for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a mercantile corporation, with its principal office at East St. Louis, Ill. By complaint, filed April 21, 1915, it alleges that the charges collected by defendants for the transportation of one carload of dried apples, in sacks, from Rogersville, Tenn., to Chicago, Ill., in December, 1912, were unreasonable. Reparation is asked, the claim having been presented to the Commission informally November 25, 1914.

The shipment was consigned originally to Bristol, Va., by way of the Virginia & Southwestern Railway, but was reconsigned thence to Chicago, Ill., by way of Virginia & Southwestern Railway and the Louisville & Nashville Railroad and connecting lines. Charges were collected in the sum of \$168, at a rate of 56 cents per 100
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pounds, composed of a rate of 25 cents to Bristol and a rate of 31 cents beyond. The actual weight of the shipment, as shown by the freight bill, was 23,400 pounds, but a minimum of 30,000 pounds was applied. Complainant does not attack the measure of the rate, but alleges that charges should have been collected only on the actual weight of the shipment.

Complainant's testimony and exhibits show that on or about December 18, 1912, its representative ordered two cars from the agent of the Virginia & Southwestern Railway at Rogersville, informing the agent that the proposed shipment consisted of about 60,000 or 64,000 pounds of dried fruit; that one car was placed for loading in the morning and the other in the afternoon of the same day; that complainant's representative intended to load an equal weight into each car, but that 40,100 pounds was loaded into the first car before the second car was placed; that the remainder of the consignment was loaded into the second car; that the agent of the Virginia & Southwestern Railway upon being informed of the unequal division of the loading agreed to bill the goods loaded into the second car as a "part lot" and to assess charges on the actual weight of the entire consignment.

Complainant asserts that the total weight of the consignment would have been equally divided between the two cars if both cars had been placed for loading at one time. Reparation is asked because the initial carrier did not furnish both cars at the same time or bill the second car, containing 23,400 pounds, as a part lot. It is not established, however, that the slight delay which occurred in placing the second car prevented complainant from equalizing the loading of the two cars.

The rate applicable from Rogersville to Bristol was governed by the southern classification, a general rule of which provided as follows:

When a lot of freight (not in bulk and not including live stock), the specified minimum carload weight for which is 20,000 pounds or more, is offered for shipment on one day, by one consignor, for one consignee and destination, in quantities in excess of the amount that can be loaded into one box, flat, or gondola car, the following rules will apply in assessing the charges:

The first car and all succeeding cars, except the last, must be fully loaded and charged for on basis of carload rate and at actual weight, but at not less than the established minimum weight per car, according to length, for each car used.

The remainder of the consignment, if loaded in one box car, shall be charged for at actual weight and at the carload rate.

The rate from Bristol to Chicago was governed by the official classification, which contained the following rule:

When a lot of freight in packages, pieces, or parts (not bulk freight—see rule 8 (A)), shipped at one time by one consignor to one consignee and destination—
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tion, whether loaded by consignor or carrier, makes a part carload in excess of full carload, or carloads, the carload minimum weight shall be charged for each full carload, unless actual weight be greater than the minimum weight, when actual weight shall be charged; and the part carload remaining over shall be charged at actual weight and carload rate, unless otherwise specified in the classification. The waybill for the part carload must have noted upon it a reference to the waybill for a full carload or carloads of the lot of which it is a part, and only one bill of lading shall be issued for any shipment subject to the provisions of this rule.

Two bills of lading were issued and apparently neither the bill of lading nor the waybill for the car containing the part lot referred to the billing covering the full car. Complainant's evidence does not show that the first car was fully loaded. On the contrary, it is shown that the unequal loading was the act of shipper's teamster, of which the shipper was fully cognizant. Upon all of the facts of record we find that the charges collected are not shown to have been unreasonable or otherwise in violation of the act.

An order dismissing the complaint will be entered.

38 I. C. C.

No. 6498.¹

CALIFORNIA CORRUGATED CULVERT COMPANY
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted October 13, 1915. Decided March 20, 1916.

Reparation, claimed on account of the discrimination found in *California Corrugated Culvert Co. v. A. G. S. R. R. Co.*, 33 I. C. C., 445, denied for want of proof of damage.

J. N. Teal and W. C. McCulloch for complainants.

H. A. Scandrett, C. A. Hart, A. C. Spencer, Joseph Finerty, C. W. Durbrow, and A. W. Hawkins for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

We found in our original report in these cases, 33 I. C. C., 445, that the rate of 95 cents per 100 pounds on corrugated, galvanized sheet iron, in carloads, from Middletown, Ohio, to Pacific coast points was not unreasonable but was unjustly discriminatory to the extent that it exceeded the 85-cent rate contemporaneously in effect on flat black or galvanized sheet iron. Reparation was denied. The cases subsequently were reopened at complainants' instance, for proof that complainants were entitled to reparation under our findings.

The effect of complainants' evidence is that they lost business on account of the difference in freight rates, but the same testimony shows that the competition which complainants' principal product, culverts, encounters from other materials, such as cement, wood, vitrified tile and iron pipe, contributed to the loss, and it is impossible to determine the relative effects of the two causes or what pecuniary loss, if any, resulted from the loss of business. Proof of damage is lacking. There is therefore no basis for an award of reparation and it will be denied.

¹ The proceeding also embraces complaint in No. 6498 (Sub-No. 1), *Security Vault & Metal Works et al. v. Chicago, Burlington & Quincy Railroad Company et al.*

No. 7523.

G. W. SHELDON & COMPANY

v.

WABASH RAILROAD COMPANY ET AL.

Submitted July 9, 1915. Decided March 20, 1916.

Charges collected for the transportation of 100 cases of pickles and 98 packages of machinery and other articles inadvertently forwarded as separate less-than-carload shipments under two bills of lading, not shown to have been illegal. Complaint dismissed.

H. W. Ackhoff for complainant.

E. R. Newman for Wabash Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, engaged in the brokerage and freight forwarding business at Chicago, Ill. By complaint, filed November 30, 1914, it alleges that the charges collected by defendants for the transportation of 100 cases of pickles and 98 packages of machinery and other articles, forwarded in October, 1913, as separate shipments under two bills of lading, from Chicago to New York, N. Y., were illegal to the extent that they exceeded the charges that would have accrued at the carload rate. Reparation is asked.

Complainant desired to forward a mixed carload of fifth-class articles from Chicago to New York, and ordered equipment from defendants for that purpose. A car was furnished for loading on the Twelfth street team track of the Wabash Railroad at Chicago, and a portion of the consignment, consisting of 98 packages of machinery and other articles, was placed in it. Complainant intended to complete loading with 100 cases of pickles for export, but complainant's teamster inadvertently delivered the pickles to the outbound freight house of the Wabash, two blocks from the team track. The employees of the freight house were unaware of complainant's intention and immediately loaded the pickles into a car carrying through freight to New York City. This car also contained other articles in bond, received and loaded the previous day, and was sealed by a United States customs inspector as soon as loading was completed. The hour of delivery at the freight house is not shown. It appears, however, that at about 3.50 o'clock p. m. the foreman of the freight

house was advised by complainant of the teamster's mistake and agreed that the pickles might be removed if a customs officer could be found who would unseal the car by 4.15 o'clock p. m. the same day. The services of the inspector could not be secured before the prescribed time and the car was forwarded to destination at once in order not to delay further the other articles in it. Two bills of lading were issued for complainant's articles, one covering the pickles, the other the machinery and other articles. Charges were collected accordingly.

Complainant contends that the shipments should have been covered by one bill of lading and accorded the carload rate. It admits its primary responsibility for the loading of the pickles, but insists that it was improper for the initial carrier to refuse to remove the shipment from the car after its attention had been called to the error that had been made. It appears, however, that the initial carrier stood ready and willing to rectify the error until further delay would have affected the interests of third parties.

We find that the charges are not shown to have been illegal, and an order will be entered dismissing the complaint.

38 I. C. C.

No. 7586.
HUDSON MOTOR CAR COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 6, 1915. Decided March 20, 1916.

Third-class rating of storage batteries in carloads from Philadelphia, Pa., to Detroit, Mich., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

R. S. Day and G. M. Stephen for complainant.
F. L. Ballard and W. L. Kinter for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of automobiles at Detroit, Mich. By complaint, filed December 12, 1914, it alleges that the third-class rate of 37 cents per 100 pounds charged by defendants for the transportation of storage batteries in carloads, shipped June, July, August, and November, 1912, from Philadelphia, Pa., to Detroit, was unreasonable and unjustly discriminatory to the extent that it exceeded the fourth-class rate of 25 cents. Reparation is asked and the establishment of a reasonable and nondiscriminatory rate for the future. The claim was presented to the Commission informally June 15, 1914. Complainant stated at the hearing that the relief sought was a reduction in the rating of storage batteries in carloads rather than the application of a rate of 25 cents per 100 pounds between the points named.

The batteries consisted of wooden cases inclosing lead plates fastened to zinc plates with connecting appliances. Complainant uses two sizes of batteries for lighting and generating purposes in the automobiles it manufactures. One size weighs 52 pounds and is worth \$9.82. Four batteries of this size are packed in a case, and when properly packed for shipment weigh approximately 260 pounds, or 50 pounds per cubic foot. The other size weighs 82 pounds and is worth \$17.13. Three of these are packed in a case, the package weighing about 280 pounds, or 93 pounds per cubic foot. Storage batteries range in value from \$5 each to more than \$200. The value of a minimum carload of the type shipped by complainant ranges from about \$4,500 to more than \$5,400, but their transportation involves no unusual risk.

The official classification rates storage batteries third class. Complainant bases its complaint largely upon the movement of storage batteries in mixed carloads with other electrical appliances at fourth-class rates within trunk line territory and from trunk line territory to central freight association territory. Prior to July 15, 1915, fourth-class rates applied both on mixed carloads of storage batteries and other electrical appliances and on straight carloads of storage batteries between points in central freight association territory and from points in central freight association territory to points in trunk line territory. Third-class rates took effect on straight carloads of batteries on July 15, 1915. There is no appreciable movement of storage batteries from central freight association territory to trunk line territory. Complainant shows that the transportation charges on a straight carload of storage batteries shipped from Philadelphia to Detroit, at the third-class rate of 37 cents per 100 pounds, minimum weight of 30,000 pounds, in effect when the shipments moved, amounted to \$111, whereas a mixed carload containing 30,000 pounds of storage batteries and 100 pounds of other electric appliances charged for at the fourth-class rate of 25 cents would have earned only \$75.25. Effective January 15, 1915, the third and fourth class rates from Philadelphia to Detroit were increased to 39 cents and 26.7 cents, respectively.

Carload shipments of storage batteries from Philadelphia to Detroit have been rated third class since 1891. Defendants state that the fourth-class mixed carload rating was established about 10 years ago to enable manufacturers of electrical appliances to make up a carload mixture of various articles intended for equipping hotels or other large buildings or in sending quantities of supplies to branch houses. Some of the articles specified in the mixture are rated fifth class. Complainant's only competitors are other automobile manufacturers and the record does not show that any of them receive storage batteries in mixed carloads. It has not been shown that the mixed carload rate adversely affects complainant's interests and complainant does not desire its withdrawal.

We find that the application of the third-class rating to the transportation of storage batteries in carloads from Philadelphia, Pa., to Detroit, Mich., has not been shown to be unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

33 I. C. C.

No. 7947.

AUSTIN Q. MILLAR, TRUSTEE,

v.

EASTERN KENTUCKY RAILWAY COMPANY ET AL.

Submitted September 7, 1915. Decided March 20, 1916.

Charges collected for the transportation of two carloads of miscellaneous secondhand articles billed as "contractor's outfit," from Willard, Ky., to Murfreesboro, Ark., found not to have been in accordance with the tariff rates. Neither the rates legally applicable nor the charges collected shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

D. L. McRae for complainant.

F. B. Clark for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in diamond mining at Murfreesboro, Ark. By complaint, filed April 27, 1915, he alleges that the rate charged by defendants for the transportation of two carloads of contractors' outfit and mining machinery from Willard, Ky., to Murfreesboro, in June, 1914, was unjust, unreasonable, and discriminatory, and in excess of the legal rate. Reparation is asked.

The shipments moved: Eastern Kentucky Railway to Hitchens, Ky.; Chesapeake & Ohio Railway to Lexington, Ky.; Louisville & Nashville Railroad to Memphis, Tenn.; St. Louis, Iron Mountain & Southern Railway to Nashville, Ark.; Memphis, Dallas & Gulf Railroad to Murfreesboro. They were billed as contractors' outfit. One shipment is said to have consisted of 1 keg of railroad spikes; one 8-inch pulley; 11 knocked-down wheelbarrow parts; 1 box greaser, machinery, parts; 1 bundle greaser plates; 1 pulley wheel; 1 box wheelbarrow parts; 135 sections of 12-pound rails; 4 half sections of 12-pound rails; five 18 cubic foot bodies for mine car; one 27 cubic foot body for mine car; 11 wheelbarrow bodies; one pair of whiffletrees; 5 boxes machinery parts; 4 boxes of railway supplies, bolts; 1 box of pipe fittings; 1 box of blacksmith's iron; 32 tank hoops; 1 ore bucket; two 12-pound rail switches. The articles included in the other shipment were 1 water tank, knocked down, viz: 78 staves, 18 pieces of bottom, and 12 sills; one 9-horsepower gasoline engine,

with cooling tank and battery, fuel tank and muffler; 1 greaser frame, small piece of machinery, 1 piece suction hose; 1 pulley shaft and socket; 1 bundle rods; 2 barrels grease; 2 wheeled scrapers with tongues; one 2-horsepower gasoline engine attached to a pump; 3 boxes fittings; 1 box zinc. Charges aggregating \$616 were collected, at a rate of 77 cents per 100 pounds, on a weight of 40,000 pounds per car. Complainant alleges that a rate of 74 cents per 100 pounds and a minimum of 24,000 pounds per car should have been applied. A demurrage charge of \$2, which accrued at Willard, is not attacked.

The track-scale net weights of the shipments were 15,200 pounds and 37,300 pounds, respectively. Complainant asserts that the actual weights were 18,500 pounds and 23,500 pounds, respectively, but admits that he did not weigh the shipments and there is no substantial evidence that the track-scale weights were erroneous. We find no tariff authority for the application either of the rate charged or of the rate claimed. No joint rates were applicable from Willard to Murfreesboro, and no item of the classifications or tariffs provided a carload rating or rate on a mixture of the commodities embraced in each shipment.

The components of the combination class rates in effect were as follows, rates stated in cents per 100 pounds:

	1	2	3	R. 26	4	5	B
Willard to Hitchens	16.5	13.0	11.0	9.0	7.5	6.5	.....
Hitchens to Lexington	40.0	35.0	27.0	22.0	18.0	16.0	.....
Lexington to Texarkana	138.0	120.0	102.0	.....	87.0	.....	58.0

Rates beyond Texarkana were made by adding arbitraries to the Texarkana rate: 10 cents per 100 pounds on less-than-carload freight and 5 cents per 100 pounds on carload freight.

Official classification ratings applied from Willard to Lexington; western classification ratings and exceptions thereto beyond. The articles included in the shipments in less than carloads were rated from one and one-half times first class to fourth class, inclusive. The official classification rated "outfits, grading contractors, including dump carts and not more than five head of horses or mules, carload," fifth class, minimum 30,000 pounds. This indefinite description of a grading contractor's outfit is perhaps broad enough to include all of the articles except the greaser frame, parts, and plates, which were the component parts of a machine used in diamond mining, and possibly the bodies for mine cars and the ore bucket. Under exceptions to the western classification "graders, bridge builders, and contractors' outfit, consisting of: Tools, tents, fixtures, grading machines, steam hoisting engines, boilers, wagons, wheelbarrows, live stock—

88 I. C. C.

not to exceed a total of 10 head of horses, mules, or oxen, in mixed carloads," were rated class B, minimum 24,000 pounds. This description was applicable to a comparatively small part of the shipments. The western classification rated mining machinery in carloads class A, minimum 24,000 pounds, subject to rule 6 (b). The term mining machinery as described in the classification would cover the greater number of articles included in one of the shipments. The other shipment consisted principally of railway track material. A commodity rate of 35½ cents per 100 pounds on railway track material, in carloads, from Lexington to Murfreesboro was in effect.

Defendants did not ascertain the separate weights of the various articles, and although this information was requested of complainant at the hearing it is not of record. It is impossible, therefore, to determine the amount of charges lawfully applicable, and the carload rates mentioned are to be regarded merely as suggestive of the rates which, in connection with the less-than-carload rates on articles not covered by carload rates, appear to afford the lowest aggregate charges.

The record discloses culpable disregard of the plain requirements of the law. The tariffs restrict the application of rates on contractor's outfit to certain specified descriptions of property. Complainant, after consultation with the traffic officials of the delivering carrier and examination of the tariffs, billed the shipments as contractor's outfit, a term which does not correctly describe the property transported. Defendants did not inspect the shipments to ascertain whether they were entitled to movement as contractor's outfit, and charged a rate which was inapplicable on that commodity on the basis of a weight that was neither the actual weight nor the minimum carload weight on contractor's outfit.

Defendants now suggest an adjustment on the basis of a rate applicable on machinery, graders, levelers, road rollers, dump carts, etc., in mixed carloads, which would result in lower charges than were collected, but which admittedly does not apply to the shipments. We can not assent to this adjustment. Charges should be collected on the basis of the combination less-than-carload rates applicable to each of the different articles unless a lower aggregate charge results from the use of the combination carload rate and minimum on such portions of the shipments as were covered by a carload rate, and the combination less-than-carload rates on the remaining articles.

Complainant has failed to submit any proof that either the rates legally applicable to the shipments or the charges collected thereon are unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

38 I. C. C.

No. 7853.
OKLAHOMA FUEL COMPANY
v.
FORT SMITH, POTEAU & WESTERN RAILWAY COMPANY
ET AL.

Submitted September 16, 1915. Decided March 20, 1916.

Charges collected for the transportation of one carload of coal from Witteville, Okla., to Gould, Okla., reconsigned to Wellington, Tex., and returned to Gould, not found to have been unreasonable. Complaint dismissed.

Henry Lampl and Tom Elcock for complainants.

C. L. Fontaine for Missouri, Kansas & Texas Railway Company of Texas and Wichita Falls & Northwestern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are J. R. Everett and C. H. Boice, copartners, engaged in the wholesale coal business at Wichita, Kans., under the firm name of Oklahoma Fuel Company. By complaint, filed March 25, 1915, they allege that the charges collected by defendants for the transportation of one carload of lump coal in January, 1914, from Witteville, Okla., to Gould, Okla., reconsigned to Wellington, Tex., and subsequently returned to Gould, were unreasonable. Reparation is asked.

The shipment weighed 83,700 pounds and moved over an intrastate route from Witteville to Gould. Subsequently to its arrival at Gould complainants' representative directed the agent of the Wichita Falls & Northwestern Railway to reconsign it to Wellington, Tex., "at the balance of the through rate." The intrastate rate on coal in carloads from Witteville to Gould by the route of movement was \$2.24 per ton. No joint through commodity rate was in effect from Witteville to Wellington, 30.2 miles beyond Gould, but a distance class rate of 33 cents per 100 pounds was applicable, and the tariffs naming it authorized reconsignment on the basis of the through rate.

The shipment arrived at Wellington on or about February 2, 1914. Tender of delivery was coupled with a demand for payment of freight charges in the sum of \$482.89, and the consignee refused to accept the shipment on the ground of excessive charges. In response

to the carrier's notice of nondelivery, received on February 3, complainants advised the carrier that if no through rate were applicable, the reconsignment was unauthorized and the shipment should be returned to Gould. On the following day complainants were informed that the charges had been reduced to \$283.21 and were requested to arrange for delivery. The charge of \$283.21 included transportation charges at the rate of 33 cents per 100 pounds, a demurrage charge of \$5 at Gould, and a reconsignment charge of \$2. Complainants refused to pay the charges demanded, and on February 13, 1914, the shipment was returned to Gould in compliance with their instructions. Upon final delivery of the shipment at Gould charges were collected as follows:

Witteville to Gould, 83,700 pounds, at \$2.24 per ton.....	\$93.74
Demurrage at Gould prior to reconsignment.....	5.00
Reconsignment from Gould to Wellington.....	2.00
Demurrage at Wellington.....	7.00
Reconsignment from Wellington to Gould.....	2.00
Gould to Wellington and return to Gould, 83,700 pounds, at 3½ cents per 100 pounds.....	29.29
Demurrage at Gould after return of shipment.....	5.00
Total	144.08

The real question in issue is whether charges aggregating \$43.29 for transporting the shipment from Gould to Wellington and return, for reconsignment and demurrage at Wellington, and for demurrage which accrued after the return of the shipment to Gould were unlawful. They are not attacked as unreasonable in the sense that they were excessive for the services performed but on the theory that defendants disregarded complainants' instructions to reconsign the shipment "at the balance of the through rate" and therefore are estopped from collecting any charge for services incident to the reconsignment. The allegation of unreasonableness rests wholly upon the erroneous assumption that no through rate applied from Witteville to Wellington and needs not to be considered further.

The intrastate rate of \$2.24 per ton charged for the transportation of the shipment from Witteville to Gould was not filed with us. The rate of 3½ cents per 100 pounds charged for the movement from Gould to Wellington and return was shown in a tariff of the Wichita Falls & Northwestern Railway as a charge for reconsignment in addition to the through rate, where reconsignment involves a back or out of line haul of over 60 miles and not over 70 miles. These rates clearly were inapplicable. There was no tariff authority for the reconsigning charge of \$2 assessed for each of the reconsignments at Gould and Wellington. The tariffs provided for reconsignments without any charge in addition to the through rate except that back

or out of line haul charges were authorized under certain conditions which were inapplicable to the reconsignments involved. The local rate on coal in carloads from Wellington to Gould was 8 cents per 100 pounds.

We find that the reconsignments involved were authorized by complainants and that the charges legally applicable were as follows:

Witteville to Wellington, 83,700 pounds, at 33 cents per 100 pounds.....	\$276.21
Wellington to Gould, 83,700 pounds, at 8 cents per 100 pounds.....	68.96
Demurrage at Wellington.....	7.00
Demurrage at Gould.....	10.00
Total.....	360.17

Only \$144.03 was collected, so that the shipment was undercharged in the sum of \$216.14.

The record affords no basis for a finding relative to the intrinsic reasonableness of the charges collected or of the rates legally applicable.

An order will be entered dismissing the complaint.

33 I. C. C.

No. 8087.

E. C. BRADLEY LUMBER COMPANY

v.

NEW ORLEANS GREAT NORTHERN RAILROAD
COMPANY ET AL.

Submitted September 9, 1915. Decided March 20, 1916.

A carload of pine lumber shipped from Smith, La., to Cobourg, Ontario, found not to have been misrouted and complaint dismissed.

L. F. Deininger for complainant.

G. B. Auburtin for New Orleans Great Northern Railroad Company.

J. A. Logan for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Cincinnati, Ohio. By complaint, filed June 16, 1915, it alleges that the rate charged by defendants for the transportation of a carload of pine lumber from Smith, La., to Cobourg, Ontario, on July 18, 1918, was unreasonable. Reparation is asked.

The shipment was consigned to complainant at Cincinnati, the bill of lading bearing in the "route" column the notation "for reconsigning." The shipment moved: New Orleans Great Northern to Jackson, Miss.; Illinois Central to Louisville, Ky.; Baltimore & Ohio Southwestern to Cincinnati, where it was reconsigned to Cobourg. No joint rate applied to the through transportation over the route of movement and the rates to and from Cincinnati were charged: 21 cents to Cincinnati and 19 cents beyond. The shipment could have moved: New Orleans Great Northern to Slidell, La.; New Orleans & Northeastern to Meridian, Miss.; Alabama Great Southern and Cincinnati, New Orleans & Texas Pacific to Cincinnati. Over this route it could have been reconsigned to Cobourg at a joint through rate of 37 cents per 100 pounds.

Complainant's whole case is that the shipment was misrouted to Cincinnati by the initial carrier. Its theory is that the notation, "for reconsigning," on the bill of lading gave notice of the shipper's inten-

tion to have the shipment ultimately go to some point beyond Cincinnati at a joint rate applicable from the point of origin to the final destination; that a shipment arriving at Cincinnati over the route of movement could not have been reconsigned to any point at a joint rate; and that it was the duty of the originating carrier to forward the shipment over the route in connection with which reconsignment at a joint rate was possible. But tariffs in our files show that at the time the shipment moved there were in effect joint rates on pine lumber in carloads from Smith to such points as Hamilton, Ohio, Dayton, Ohio, and Buffalo, N. Y., and that the shipment could have been reconsigned from Cincinnati to any of these points at the joint rates from origin to ultimate destination.

We find that the shipment was not misrouted, and an order will be entered dismissing the complaint.

33 I. C. C.

No. 8172.
SUNDERLAND BROTHERS COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted December 7, 1915. Decided March 20, 1916.

Through rate charged by defendants for the transportation of a carload of lump soft coal from Hudson, Wyo., to Steinauer, Nebr., found unreasonable to the extent that the rate charged for the haul from Omaha, Nebr., to Steinauer exceeded the rate subsequently established and now in effect.

H. S. Colvin for complainant.

R. G. Brown for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling fuels and building materials at Omaha, Nebr. By complaint, filed July 21, 1915, it alleges that the rate charged by defendants for the transportation of a carload of lump soft coal shipped November 15, 1913, from Hudson, Wyo., to O'Neill, Nebr., and there reconsigned to Omaha, Nebr., where it was again reconsigned to Steinauer, Nebr., was unreasonable and unjustly discriminatory. Reparation is asked.

The shipment weighed 59,100 pounds and moved: Chicago & North Western Railway from Hudson to Omaha; Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, from Omaha to Steinauer. Charges were collected in the total sum of \$125.59 on the actual weight of the shipment, at a combination rate of \$4.25 per net ton, composed of a commodity rate of \$2.90 per net ton from Hudson to Omaha and a rate of \$1.35 per net ton from Omaha to Steinauer.

The \$1.35 component charged from Omaha to Steinauer is the real cause of the complaint. There was no tariff authority for it. No specific commodity rate applied on soft coal from Omaha to Steinauer. The rate legally applicable was the class D rate of 9 cents per 100 pounds, governed by the western classification. The shipment, therefore, was undercharged \$13.30. A rate of \$1.173 per net ton, minimum 40,000 pounds, applied on hard coal from Omaha to Steinauer. Complainant contends that the \$1.35 rate charged was

unreasonable to the extent that it exceeded this rate. Effective August 27, 1914, the Rock Island amended its tariff to render the \$1.173 rate applicable on soft coal as well as hard coal.

Defendant, Rock Island, states that soft coal should not take a higher rate than hard coal, and that it is generally the custom, wherever differences are observed, to maintain lower rates on soft coal than on hard coal. It admits that the charges from Omaha to Steinauer were unreasonable to the extent that they exceeded those that would have accrued at a rate of \$1.173 per net ton, and expresses its willingness to make reparation on that basis.

Complainant made no attempt to show that the rate assailed was unjustly discriminatory.

We find that the charges assailed were unreasonable to the extent that the charges collected for the transportation from Omaha to Steinauer exceeded those that would have accrued at a rate of \$1.173 per net ton; that the shipment was made and that complainant paid and bore charges thereon as described; that complainant has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation from the Chicago, Rock Island & Pacific Railway Company in the sum of \$5.23, with interest from September 26, 1914.

An order will be entered awarding reparation, but as the rate herein found reasonable has been in effect for more than a year no order will be entered for the future. Defendant, Rock Island, may waive the undercharge found outstanding.

38 I. C. C.

No. 7879.
ASA WILCOX
v.
ERIE RAILROAD COMPANY ET AL.

Submitted September 24, 1915. Decided March 20, 1916.

Reparation awarded on account of unreasonable through charges collected on a shipment of seed potatoes from Seeley Creek, N. Y., to Lemon City, Fla.

H. D. Wilcox for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Wells, Pa., with a winter home at Arch Creek, Fla. By complaint, filed April 2, 1915, he alleges that the charges collected by defendants for the transportation of a less-than-carload shipment of potatoes from Seeley Creek, N. Y., to Lemon City, Fla., were unreasonable and excessive. Reparation is asked.

Complainant shipped 80 bags of seed potatoes, weighing 4,500 pounds, from Seeley Creek to Lemon City, October 17, 1914. The shipment was carried by the Erie Railroad from Seeley Creek to New York harbor; by the Ocean Steamship Company of Savannah from New York to Savannah, Ga.; by the Atlantic Coast Line Railroad from Savannah to Jacksonville; and by the Florida East Coast Railway from Jacksonville to destination. Charges were collected in the sum of \$42.70. No joint through rate was in effect. A rate of 18 cents per 100 pounds applied from Seeley Creek to New York harbor, a rate of 16 cents from New York harbor to Jacksonville, and a rate of 70 cents thence to destination, making a combination through rate of \$1.04 per 100 pounds. The charges legally due, therefore, were \$46.80.

Complainant does not attack the rates legally applicable north of Jacksonville; but contends that the rate of 70 cents from Jacksonville to Lemon City was unreasonable in comparison with a rate of 52 cents per bag of 165 pounds, contemporaneously applicable on local shipments from Jacksonville to Lemon City. The Florida East Coast Railway Company has admitted the unreasonableness of the 70-cent rate and a rate of 52 cents per standard sack has been

established since issue was joined. At that rate the charges on the shipment would have amounted to only \$30.90.

We found in *Du Puis v. F. E. C. Ry. Co.*, Docket No. 5713, unreported, decided July 31, 1914, that 46 cents per sack of 165 pounds was a reasonable rate for the Jacksonville-Lemon City component applied to the through interstate transportation of potatoes in carloads to Lemon City. The less-than-carload rate now in effect appears to be properly adjusted with respect to the carload rate.

We find that the through charges collected by the defendants on the shipment involved were unreasonable to the extent that they exceeded \$30.90; that the through charges were made excessive by reason of the local rate from Jacksonville to Lemon City; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found unreasonable; that he has been damaged thereby to the extent of \$11.80; and that he is entitled to reparation in the sum of \$11.80, with interest from November 5, 1914. The undercharge found outstanding may be waived. The combination rate of 34 cents from Seeley Creek to Jacksonville has not been found unreasonable and will not be made the subject of an order. But the Florida East Coast Railway will be required to maintain as maximum its present rate of 52 cents per standard sack on potatoes from Jacksonville to Lemon City, applicable to through interstate transportation from Seeley Creek, for a period of two years.

An appropriate order will be entered.

38 I. C. C.

No. 8018.

OKLAHOMA FUEL COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 461.

Submitted September 16, 1915. Decided March 20, 1916.

Rate charged for the transportation of one carload of coal from Witteville, Okla., to Burkburnett, Tex., and the rate legally applicable found to have been unreasonable. Reparation awarded. Defendants' application for relief from the provisions of the fourth section denied.

Henry Lampl and Tom Elcock for complainants.

C. L. Fontaine for Missouri, Kansas & Texas Railway Company of Texas and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are J. R. Everett and C. H. Boice, copartners, engaged in the wholesale coal business at Wichita, Kans., under the firm name of the Oklahoma Fuel Company. By complaint, filed May 15, 1915, they allege that the charges collected by defendants for the transportation of one carload of lump coal from Witteville, Okla., to Burkburnett, Tex., January 13, 1914, were unreasonable. Reparation is asked. That portion of Fourth Section Application No. 461 of agent Leland which seeks authority to continue through rates on lump coal from Witteville to Burkburnett higher than the aggregate of the intermediate rates to and from Whitesboro, Tex., was heard with the complaint.

The shipment moved: Fort Smith, Poteau & Western Railway to Poteau, Okla.; Kansas City Southern Railway to Texarkana, Ark.-Tex.; Texas & Pacific Railway to Whitesboro, Tex.; Missouri, Kansas & Texas Railway of Texas beyond. Charges were collected on 81,500 pounds of coal in the sum of \$144.29 at a rate of \$3.54 per ton. The legal rate was a joint class D rate of 31 cents per 100 pounds, and the shipment was undercharged \$108.36. Complainants' claim for reparation as amended at the hearing is based on a rate of \$2.55 per ton, composed of a rate of \$2 per ton from

Witteville to Wichita Falls, Tex., and a rate of 55 cents per ton beyond. But the \$2 rate from Witteville to Wichita Falls was canceled September 7, 1913, rendering applicable a combination rate of \$2.85 per ton.

Complainants cite a joint commodity rate of \$2.50 per ton contemporaneously applicable to Burkburnett from points in the McAlester group, including Wilburton, Okla., on the Missouri, Kansas & Texas Railway, and Dewar, Okla., on the Missouri, Oklahoma & Gulf Railway. Witteville is approximately 40 miles east of Wilburton and is grouped with points on the Kansas City Southern Railway and the Poteau Valley Railway near Poteau, Okla. But the haul from Witteville to Burkburnett, 357 miles, is over four lines, while the hauls from Wilburton, 267 miles, and from Dewar, 297 miles, are only two-line hauls. Complainants' contention that the rate to Burkburnett from Witteville should not exceed the rate from Wilburton, Dewar, and other points in the McAlester group is not sustained.

The aggregate of the intermediate rates from Witteville to Burkburnett was \$3.05 per ton: \$1.90 per ton from Witteville to Whitesboro and \$1.15 per ton beyond. Defendants are willing to make reparation on the basis of this rate, and offered no evidence to support their fourth section application. The application accordingly will be denied to the extent that it is involved.

We find that the rate charged and the rate legally applicable were, and for the future will be, unreasonable to the extent that they exceeded or exceed the aggregate of the intermediate rates to and from Whitesboro; that complainants made the shipment involved as described and paid and bore charges thereon at the rate herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$20, with interest from January 31, 1914. Defendants may waive the undercharge found outstanding.

Appropriate orders will be entered.

38 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 694.
LUMBER TO C., M. & ST. P. RY. STATIONS.

Submitted December 15, 1915. Decided March 30, 1916.

Proposed cancellation of joint through rates on lumber from producing points on the Chicago & North Western Railway in Minnesota, Wisconsin, and the upper peninsula of Michigan, to certain points on the Chicago, Milwaukee & St. Paul Railway west of the Mississippi River, found not justified.

C. C. Wright and R. H. Widdicombe for Chicago & North Western Railway Company.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

A. E. Solie, F. M. Ducker, and D. M. Clumpner for protestants.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

The proposed cancellation of joint through rates on lumber from points in Minnesota, Wisconsin, and the upper peninsula of Michigan on the Chicago & North Western Railway, hereinafter termed the North Western, to points in Minnesota, North Dakota, South Dakota, Iowa, and Missouri, on the Chicago, Milwaukee & St. Paul Railway, hereinafter termed the Milwaukee, is the subject of this investigation. The items designed to bring about this result were published in a supplement to become effective on August 15, 1915, but upon protests of the Central Wisconsin Traffic Bureau, Northern Hemlock & Hardwood Manufacturers Association, and various lumber companies located at points on respondents' lines, their operation was suspended to December 13, 1915, and later to June 13, 1916.

For many years joint rates on lumber have been in effect from points in the producing sections of Minnesota, Wisconsin, and the upper peninsula of Michigan to points west of the Mississippi River. These rates have been published in agency tariffs which limit their application by providing "where routing is not shown to points on connecting lines, the rates will not apply." Prior to June 1, 1915, no such routing was shown from producing points on either the North Western or the Milwaukee to consuming points on the other. Effective July 20, 1914, the North Western issued a separate schedule containing directions for the routing of all traffic from points on its line to points on connecting lines to which joint rates were in effect. This schedule was published to apply in cases where the

tariff naming the joint rates did not provide specific routing. Effective June 1, 1915, the agency tariff carrying the lumber rates from points in Minnesota, Wisconsin, and the upper peninsula of Michigan to points west of the Mississippi River was reissued. In this new tariff the former specific routing for traffic handled in connection with the North Western was omitted, and reference was made instead to the separate schedule of that company. But since this separate schedule also carried routing directions for traffic destined to points on the Milwaukee, the effect of such reference in the new agency tariff was to make the through rates carried therein apply as joint rates from points on the North Western to points on the Milwaukee. These joint through rates are lower than the lowest combination of local rates on intermediate junction points, which was the only basis available prior to June 1, 1915, the effective date of the new agency tariff. The suspended items are in a supplement to the last-mentioned tariff, and, if permitted to become effective, will cancel the application of these joint through rates, leaving in effect the combination rates which, to most points, are from 3 to 5 cents per 100 pounds higher than the joint rates.

Respondents offered no evidence in support of the reasonableness of the combination rates which they proposed to reestablish. They contend that the application of the joint through rates from points on the North Western to points on the Milwaukee was made effective by mistake. The record shows that, while the reference to the separate schedule of routing directions of the North Western was incorporated in the new agency tariff at the request of that company, its officers did not realize that one effect would be to institute the joint through rates to points on the Milwaukee. On the other hand, it appears that joint rates, equal in amount to those which the suspended schedule is designed to cancel, are now and for many years have been applicable from the same points on the North Western to points west of the Mississippi River on lines other than the Milwaukee, and also from points in the same producing territory on lines other than the North Western to the same points on the Milwaukee. Respondents admitted that if they had decided to publish joint through rates those now in effect by mistake would have been the rates adopted, as they are constructed on the "established basis."

The principal, if not the only, reason why respondents do not desire to maintain joint through rates from producing points on the one to consuming points on the other is that each desires to supply the demand of consuming points on its line from producing points on the same line. It is said to be good business policy for a railroad, by adjustment of rates, to give its industries a practical monopoly of the traffic on its line. As already mentioned, respondents have not adhered to this policy with respect to all connecting

lines and, in any event, it can not be sanctioned. A carrier has no right, by refusing through routes and joint rates, to dictate the markets from which shippers on its line must purchase, or the territory to which industries on its line must sell, or in any other way to restrict fair competition. *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, 366; *Lumber Rates from Texas, Louisiana, and Arkansas*, 28 I. C. C., 471, 473, 476. In the latter case it appeared that some of the joint rates sought to be canceled had been made effective by mistake, but this circumstance was deemed to be of little moment.

It is pointed out by the North Western that its separate schedule of routing directions provides that traffic destined to points on the Milwaukee shall be delivered to that line at the first junction point. This respondent therefore contends that the present application of the joint through rates has the effect of depriving it of the long haul. If the suspended items are permitted to become effective, the lowest combination of local rates on intermediate junction points will apply. On traffic destined to points in Iowa, for example, the lowest combination of local rates will, in nearly all cases, base on the junction point in Iowa nearest to the destination point, as the rates for short distances applicable on interstate traffic between points in Iowa are generally lower than between points in Wisconsin. The same situation will exist to points in Minnesota, i. e., the lowest combination of local rates will, in nearly all cases, base on the junction point in Minnesota nearest to the destination point. To only a very few of the destination points affected will the routing or the points of interchange under the proposed rates be such as to deprive the North Western of its long haul. In view of these facts, it may be said that these respondents propose by the suspended items to do two things: (1) Increase the present rates, and (2) change the routing or points of interchange so as to give the originating line the long haul.

On behalf of protestants it was shown that the lumber mills on the North Western in the producing territory described come into active competition with mills located on other lines in the same rate groups in that territory. They state that the difference between the joint through rates and the lowest combination of local rates on intermediate junction points is so great that, prior to June 1, 1915, it was difficult for the mills on the North Western to compete with mills on other lines in this producing territory for traffic destined to points on the Milwaukee. This condition would be restored if the suspended items were permitted to become effective. In other words, the failure of respondents to publish joint through rates from producing points on the North Western to consuming points on the Milwaukee, while maintaining such rates from points on other lines in the same pro-

38 I. C. C.

ducing territory to the same consuming points, subjected the producing points on the North Western to undue prejudice and disadvantage and, if the suspended items are permitted to become effective, this prejudicial condition will be restored. During the past two or three years several shippers have asked respondents to establish the joint rates which the suspended items propose to cancel.

Upon consideration of all the facts of record, it is the finding and conclusion of the Commission that respondents have not justified the proposed cancellation of the joint through rates in question. An order requiring the cancellation of the suspended items will be entered, without prejudice to the right of respondents so to change their present routing directions as to give the originating line the long haul.

38 I. C. C.

No. 6846.
MUTUAL OIL COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted April 7, 1915. Decided April 3, 1916.

Rate charged for interstate transportation of refined petroleum from Coffeyville and Niotaze, Kans., to Superior, Nebr., found to have been unreasonable.
• Reparation awarded in view of the special conditions shown of record.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In *Mutual Oil Co. v. A., T. & S. F. Ry. Co.*, Docket No. 6846, unreported, the issue as to the reasonableness of the rate on refined petroleum from Coffeyville and Niotaze, in the state of Kansas, to Superior, in the state of Nebraska, was left undetermined. As to that question it was said:

The reasonableness of the through rate between the points in question is also challenged in this complaint, but as those rates are closely related to the rates involved in *Mid-Continent Oil Rates*, a proceeding now pending but undecided, the question as to the reasonableness of the rates here involved will be reserved until the issues in that case are ready for consideration and disposition.

The three points are served both by the Missouri Pacific and by the Santa Fe, the latter being hereinafter referred to as the defendant. On April 2, 1912, the date of the first shipment by the complainant from Coffeyville, the rates of the defendant and the Missouri Pacific were respectively 26 cents and 31 cents per 100 pounds. On December 18, 1913, the defendant reduced its rate to 20.5 cents, and before the complaint was filed it offered to make reparation on the basis of the latter rate, upon condition that the complainant would pay the undercharges on certain shipments hereinafter mentioned.

The average distance from the Kansas group of producing points, including Coffeyville and Niotaze, to Superior is 292 miles and to Omaha 344 miles. To the latter point, in *Mid-Continent Oil Rates*, 36 I. C. C., 109, a reasonable maximum rate for the transportation of refined petroleum from the Kansas group was found to be 20 cents per 100 pounds, the rate at that time being 17 cents. A substantial part of the haul to Superior by the Santa Fe is over a branch line; and upon all the facts disclosed of record we find that the 26-cent rate

for the transportation of refined petroleum from Coffeyville and Niotaze to Superior was unreasonable to the extent that it exceeded the present rate of 20.5 cents per 100 pounds. As the latter rate has been in effect more than two years, an order requiring its maintenance for the future is unnecessary.

The undercharges hereinbefore mentioned grew out of the rebilling of certain shipments by the complainant at Webber, in the state of Kansas, on intermediate rates aggregating 18½ cents, in order to avoid the through charge of 26 cents. The defendant has properly made demand upon the complainant for the resulting undercharges, and the complainant has advised us that they have been paid, upon the basis, as we assume, of the through rate of 26 cents then legally in effect. Upon those shipments, as well as upon others made by the complainant, on which it paid the through rate of 26 cents herein found to have been unreasonable, we find from the record that the complainant paid and bore the charges, and that as to the shipments delivered at destination within two years prior to the filing of the complaint on April 22, 1914, and on which charges in excess of 20.5 cents per 100 pounds were paid, the complainant has been damaged and, under the special circumstances disclosed of record, is entitled to reparation to the extent of the excess. The informal correspondence prior to the filing of the complaint furnishes no data from which particular shipments may be identified and did not act to stop the running of the statute of limitations.

The exact amount of reparation can not be determined on the present record. The complainant should therefore prepare a statement showing, as to each shipment on which reparation is claimed, the date of movement, points of origin and destination, car number and initials, route, weight applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to the defendant for verification. Upon the receipt of a statement so prepared and verified the matter of reparation will have further attention and an appropriate order will be entered.

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No. 7777.

CHAMBER OF COMMERCE OF WASHINGTON, D. C., ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION No. 1781.

Submitted November 6, 1915. Decided April 3, 1916.

On the facts of record, *Held*:

1. That portion of defendants' Fourth Section Application No. 1781 which asks authority to continue lower commodity rates to Fredericksburg, Richmond, and Petersburg, Va., than to Washington, D. C., on traffic from New York and other eastern points is denied.
2. Defendants should establish a list of commodity rates from New York and other eastern points to Washington substantially similar to their commodity rates contemporaneously maintained from the same points to Fredericksburg, Richmond, and Petersburg, on a reasonable basis lower than the class rates.
3. Case held open to afford the carriers an opportunity to readjust their commodity rates in accordance with the views expressed in the report.

Chapin Brown and *H. Earleton Hanes* for Washington Chamber of Commerce.

Maurice D. Rosenberg for Retail Merchants Association.

W. S. Watts for complainants.

W. C. Coleman for Baltimore & Ohio Railroad Company.

F. D. McKenney and *W. C. Carpenter* for Pennsylvania Railroad Company and affiliated lines.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The complaint alleges, in substance, that defendants have omitted to establish just and reasonable commodity rates to Washington from eastern points named in tariffs of the Baltimore & Ohio and Pennsylvania railroads, of which New York and Philadelphia are illustrative, and that because of such omission complainants, who are corporations, firms, and individuals engaged in business in Washington, D. C., are subjected to unjust and unreasonable freight charges, in violation of sections 1 and 4. They ask that defendants be required to establish commodity rates on traffic from eastern points to Washington which shall be no higher than the commodity rates maintained by them on like traffic to Fredericksburg, Richmond, and Petersburg, Va. That portion of defendant's Fourth Section Application No. 1781 which seeks authority to continue lower commodity rates from eastern points to Fredericksburg, Richmond, and Petersburg, Va., than rates on the same commodities to Washington, D. C., was heard in connection with this proceeding.

In *Chamber of Com., Washington, D. C., v. B. & O. R. R. Co.*, 30 I. C. C., 446, the class rates then in effect to Washington from points in eastern and New England territories, including New York and Philadelphia, were involved and were found not to be unreasonable. The long-and-short-haul rule of the fourth section was also involved, and the application of the carriers for authority to continue lower class rates to Richmond than to Washington was denied. The class rates to Richmond were subsequently increased to the Washington basis. At the time of the decision the class rates to Washington from New York and Philadelphia were as follows:

Class.....	1	2	3	4	5	6
New York.....	37	31	26	20	15½	13
Philadelphia.....	28	25	20	16	13	11

Under authority of *The Five Per Cent Case*, 32 I. C. C., 325, 330-332, the carriers increased their class rates so that, as now in effect from New York and Philadelphia to Washington, they are as follows:

Class.....	1	2	3	4	5	6
New York.....	38.6	32.6	27.2	21.0	16.3	13.7
Philadelphia.....	29.4	26.3	21.0	16.8	13.7	11.6

The defendants publish commodity rates from New York and Philadelphia to Fredericksburg, Richmond, and Petersburg, embracing a list of over 500 articles, which are considerably lower on most of the articles than the class rates under which like kinds of traffic move to Washington. The general situation is illustrated by a comparison of the class rates on representative articles to Washington with the commodity rates on like articles to Fredericksburg, Richmond, and Petersburg, as shown in the following table:

Class rates from New York to Washington compared with commodity rates to Fredericksburg, Richmond, and Petersburg.

	Quantity.	Washington.		Fredericksburg, Richmond, Petersburg.	Difference.
		Rating.	Rate.		
			Cents.	Cents.	Cents.
Bags, paper.....	L. C. L.	3d.....	27.2	22.1	5.1
Canned fruits, vegetables, and fish.....	C. L.	5th.....	16.3	15.7	.6
Coffee, roasted, in glass or earthenware, packed.....	L. C. L.	2d.....	32.6	22.1	10.5
Cotton knit goods, n. o. s., and cotton dry goods.....	L. C. L.	1st.....	38.6	26	12.6
Flour.....	C. L.	6th.....	13.7	12.1	1.6
Grain.....	C. L.	6th.....	13.7	12.6	1.1
Iron and steel articles: Columns, beams, girders, agricultural implement parts, nails, cast and wrought iron pipe, pipe fittings, plate and wire.....	C. L.	5th.....	16.3	13.7	2.6
Meat, salted, smoked, and pickled.....	C. L.	5th.....	16.3	12.6	3.7
Milk, condensed or evaporated, canned.....	C. L.	4th.....	21	15.7	5.3
Paper, building and roofing.....	C. L.	6th.....	13.7	12.5	1.2
Salt.....	C. L.	6th.....	13.7	11.5	2.2
Sugar.....	C. L.	5th.....	16.3	10.5	5.8
Coal tar and pitch.....	C. L.	5th.....	16.3	12.5	3.8
Tobacco, chewing, fine cut.....	L. C. L.	1st.....	38.6	36.5	2.1
Tobacco, plug.....	L. C. L.	3d.....	37.2	22.1	15.1
Tobacco, cut plug, chewing or smoking.....	L. C. L.	1st.....	38.6	34.5	4.1

On canned fruits, vegetables, cement, flour, grain, sugar, and a few other articles, commodity rates are published by the rail carriers to Washington the same as or lower than to Richmond. Complainants do not attack the class rates as such, but their complaint is of a situation which results from the fact that commodity rates are not published to Washington on the same or relatively the same basis as commodity rates to the Virginia cities named. They contend that in the absence of commodity rates to Washington, other than as stated above, they are subjected to the payment of freight charges which are unreasonable in themselves, and relatively unreasonable when compared with freight charges on like traffic to the more distant Virginia cities. They submitted evidence tending to show that commodity rates to Washington on the same basis and for like traffic as those now published to Fredericksburg, Richmond, and Petersburg would be just and reasonable. Tables of commodity rates for similar distances between important points in the east were filed of record, but they are not accompanied by evidence of the relative transportation conditions, without which the suggested comparisons are of little value.

The wide difference in the rail rates to Washington on the one hand and to Fredericksburg, Richmond, and Petersburg on the other presents a situation of relative injustice to the business interests of Washington which would seem to call for correction. The freight charges on some articles of commerce in less-than-carload lots would be less to Washington if moved on commodity rates to Fredericksburg and then on the local rate back, than if moved to Washington direct.

In defense of the existing adjustment, and in support of their fourth section application, the defendants contend that the commodity rates to Fredericksburg, Richmond, and Petersburg result from water competition at those points. It is admitted that water competition exists at Washington also, but not so strong as at the other points.

From New York there is a water line service which furnishes second morning delivery at Richmond. There is a triweekly water line service from Philadelphia, and a daily water line service from Baltimore, to Richmond. At Fredericksburg there is a triweekly service by three water routes and a weekly service by another route. Washington has a daily water line service from New York with second morning delivery, and a triweekly service from Philadelphia and Baltimore. All-water freight breaks bulk at Norfolk, except when moved via the continuous boat line between Baltimore and Fredericksburg, and is transferred to other steamers for Richmond, Fredericksburg, or Washington, as the case may be. It was testified that the boat line which serves Fredericksburg from Baltimore, and in connection with other lines from Philadelphia, is owned and con-

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trolled by the Pennsylvania Railroad Company. There are other lines, however, which are not owned or controlled by the rail carriers. Petersburg is on the Appomattox River, about 10 miles away from the James River. The record does not show that water competition of material consequence exists at that point.

From the evidence of record we have no doubt that water competition of compelling force exists at Norfolk. The boat lines furnish an expeditious service from New York and Philadelphia, giving first morning delivery. The all-rail rates from New York and Philadelphia are the same as the water line rates, and have been for years. But at the points herein directly involved water competition is not nearly so strong as at Norfolk. There is testimony of record to the effect that the reasons why commodity rates by rail are not published to Washington on the same basis as to Richmond are, first, because the water carriers do not publish the same line of rates to Washington as to Richmond, and, second, because the rail carriers do not find it necessary to meet water competition at Washington. There is also testimony that the all-rail tonnage into Washington, which moves chiefly under class rates, is more than ten times the tonnage of the water lines, and that 80 or 90 per cent of the tonnage to Richmond moves under commodity rates either by rail or by water.

In *Chamber of Com., Washington, D. C., v. B. & O. R. R. Co., supra*, we considered the question of water competition as affecting the class rates to Richmond and Washington from eastern and New England points, including New York and Philadelphia. The claim of the carriers was that the lower class rates to Richmond were caused by water competition. Upon the record then before us we said:

The evidence shows that the rates to Richmond are affected by water competition, but the same is true of the rates to Washington; and we do not think the record furnishes justification for lower rail rates to Richmond than to Washington on account of such competition.

Washington is intermediate to Richmond on the all-rail routes from New York. It is not shown that water competition is enough stronger, if stronger at all, at Richmond than at Washington to justify a difference in the all-rail rates in favor of Richmond.

The principle of the decision in that case is equally applicable to commodity rates, and the evidence now before us is not sufficient to justify a different conclusion. The record indicates that the commodity rates to Richmond and Petersburg are not so much due to water competition as to other conditions. Norfolk, Richmond, and Petersburg are business centers of importance, situated in the same general territory, and in their commercial relations are more or less affected by freight rates from common sources of supply and to

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common markets. The chief witness for defendants, in his testimony at the hearing, assumed that the rail rates to Richmond are influenced by the water rates to Norfolk because both are Virginia cities. The evidence shows that water competition at Richmond is somewhat stronger than at Washington, but the difference is, in our opinion, insufficient to justify any material difference in freight rates to the two points, certainly not a difference so great as now exists. As to Fredericksburg and Petersburg the showing is even less convincing.

Another feature of the general situation is that upon certain kinds of traffic, rated fourth class or higher, a store-door delivery service within certain prescribed limits is given by the water lines at Washington. This delivery service costs the water carriers about 7 cents per 100 pounds. It is of importance to consignees, and tends to support complainants' contention, that water competition is as strong at Washington as at Richmond, where no delivery service is accorded by the water lines.

Upon the facts of record we are of opinion and find that defendants have not shown themselves entitled to continue commodity rates to Fredericksburg, Richmond, or Petersburg lower than rates contemporaneously maintained by them on like traffic to Washington. It follows that their said fourth section application must be denied, and it will be so ordered.

On the theory that the existing commodity rates from New York and other eastern points to Fredericksburg, Richmond, and Petersburg are just and reasonable commodity rates to be applied on like traffic to Washington, complainants ask that defendants be required to establish a list of commodity rates to Washington similar to the list now in effect to the Virginia cities named. Washington and Richmond now have practically the same class-rate adjustment from New York, and against this adjustment there is no complaint. Richmond enjoys all-rail commodity rates on approximately 500 articles of commerce, whereas Washington enjoys all-rail commodity rates upon only a few articles. No question is raised as to the reasonableness of the few commodity rates to Washington. The gravamen of the complaint is that the defendants do not publish like rates on a larger number of articles. They contend that Washington is entitled to commodity rates in line with those accorded to Fredericksburg, Richmond, and Petersburg. There is much force in the contention, and we are of the opinion that a reasonable list of commodity rates should be established to Washington on a basis lower than the existing class rates, but we shall make no order as to this phase of the case at this time. The interested carriers will themselves be given an opportunity to readjust their commodity rates to

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Washington, Fredericksburg, Richmond, and Petersburg in accordance with the views herein expressed. If this is not done within 60 days from the service of this report, the complainants may bring the matter to our attention by supplemental petition making the interested carriers south of Washington parties, whereupon the Commission will further consider the case and enter an appropriate order.

Complainants ask for reparation on past shipments, but under the circumstances shown of record we do not think the case is one in which reparation would be justified.

No. 7655.

BRADLEY TIMBER & RAILWAY SUPPLY COMPANY

v.

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY
COMPANY ET AL.**

Submitted September 15, 1915. Decided March 31, 1916.

Charges collected for the transportation of a carload of lumber from Weirgor, Wis., to Chicago, Ill., found to have been assessed with tariff authority. Complaint dismissed.

V. A. Anderson for complainant.

H. B. Ramsey for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in lumber at Duluth, Minn. By complaint, filed January 9, 1915, it alleges that the charges collected by defendants for the transportation of a carload of lumber from Weirgor, Wis., to Chicago, Ill., November 16, 1912, were excessive and unlawful. Reparation is asked. The complaint was presented to the Commission informally on August 18, 1914.

The shipment weighed 36,600 pounds and moved: Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, from Weirgor to Milwaukee, Wis.; Chicago, Milwaukee & St. Paul Railway thence to Chicago. Charges were collected in the sum of \$54.90, at a combination rate of 15 cents per 100 pounds, composed

of a rate of 11 cents from Weirgor to Milwaukee, and a rate of 4 cents from Milwaukee to Chicago. Complainant contends that the proper rate was a joint rate of $11\frac{1}{2}$ cents per 100 pounds applicable on lumber from Weirgor to Chicago.

Defendants state that the rate charged was applicable, because the shipment was billed to Milwaukee, and was forwarded to Chicago after arrival at that point. A duplicate copy of the original shipping ticket, signed by the consignor and dated November 16, 1912, was introduced by defendants. It shows that complainant was the consignee and that delivery was to be made at Milwaukee. The original waybill and a copy of the bill of lading also were introduced and show the same thing. A telegram sent by the Soo line's local agent to the general freight agent November 20, 1912, asking that the shipment be diverted to Chicago, states that the consignee had made a mistake in billing. The shipment arrived at Milwaukee November 20, 1912, before the order for diversion was received, and on November 21 the shipper was advised that the order could not be executed. On November 22 the consignor ordered the car rebilled to Chicago.

Complainant introduced a copy of its letter of November 20, 1912, addressed to the Soo line, requesting a change in the name of the consignee. The original bill of lading was inclosed with this letter, which complainant asserts showed Chicago as the original destination, but the bill of lading appears to have been lost. Complainant was then without knowledge that the shipment had actually moved to Milwaukee. The tariffs in effect permitted rebilling only at the combination of the local rates to and from Milwaukee.

We find that the shipment was billed originally to Milwaukee, and thence to Chicago; and that the lawful rate was assessed.

The complaint accordingly will be dismissed.

SS I. C. C.

No. 6260.
SALEM IRON WORKS ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 19, 1915. Decided March 31, 1916.

Rate of \$3.094 per gross ton charged for the transportation of coke from Wilkeson, Wash., to Salem, Oreg., found to have been unreasonable to the extent that it exceeded \$2.55 per gross ton. Reparation awarded.

E. M. Cousin for complainants.

C. W. Durbrow for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are G. W. Shand and A. F. Marcus, copartners, operating iron foundries at Salem, Oreg., under the name of the Salem Iron Works; and the Anderson Steel Furnace & Boiler Works, a corporation engaged in the same business at the same place. By complaint, filed October 21, 1913, they allege that the rate charged by defendants for the transportation of eight carloads of coke from Wilkeson, Wash., to Salem during the period from September 7, 1911, to July 16, 1913, was unreasonable. Reparation is asked. The complaint was first received July 14, 1913, and at that time covered only shipments moved between February 1, 1911, and March 12, 1913. It was returned to complainant for correction and was received by us in its present form October 21, 1913.

Six of the shipments were made by the Salem Iron Works; two by the Anderson Steel Furnace & Boiler Works. The Salem Iron Works attempted at the hearing to enlarge its claim to cover two additional shipments, moved in February and May, 1911, but as the claims accrued more than two years before they were filed we can not consider them. No one familiar with the facts relative to the shipments by the Anderson Steel Furnace & Boiler Works appeared at the hearing and no testimony was offered with respect to them. The shipments by the Salem Iron Works, hereinafter called complainants, aggregated 274,660 pounds. No joint rate was applicable to them and charges were collected in the sum of \$378.48 at a rate of \$1.75 per gross ton from Wilkeson to Portland, Oreg., and a rate of \$1.20 per net ton, or \$1.344 per gross ton, from Portland to Salem,

being \$3.094 per gross ton in the aggregate. Effective July 15, 1913, defendants published a rate of \$2.55 per gross ton on the traffic and complainants contend that the rate charged was unreasonable to the extent that it exceeded \$2.55 per gross ton.

Complainants rely upon *Jubitz v. S. P. Co.*, 27 I. C. C., 44, decided May 5, 1913, in which we considered the identical rate in controversy and held that it was unreasonable to the extent that it exceeded \$2.55 per gross ton, for the reason that the rate of the Southern Pacific Company from Portland to Salem was unreasonable for through traffic originating at Wilkeson, to the extent that it exceeded 80 cents per gross ton.

We find, following that decision, that the rate assailed was unreasonable to the extent that it exceeded \$2.55 per gross ton; that complainants, Salem Iron Works, made the six shipments considered as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that they have been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record, and complainants should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, car number and initials, route, weight, rate applied, charges collected, date of payment of charges, and the amount of reparation due under our findings herein, which statements should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants we will consider further issuing an order awarding reparation.

As the rate herein found reasonable has been in force for more than two years, no order for the future is necessary.

38 I. C. C.

No. 6340.
MOUNT PLEASANT FERTILIZER COMPANY
v.
**NEW ORLEANS & NORTHEASTERN RAILROAD
COMPANY ET AL.**

**PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
799, 2138, 602, 1548, 461, 458, AND 1952.**

Submitted December 8, 1914. Decided March 31, 1916.

1. Carload rates on fertilizer from Mount Pleasant, Tenn., to various destinations in Kentucky, Alabama, and Mississippi considered and the rates to certain destinations found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

G. M. Stephen and S. J. Bolton for complainant.

M. P. Callaway for New Orleans & Northeastern Railroad Company; Alabama Great Southern Railroad Company; Southern Railway Company; Alabama & Vicksburg Railway Company; and Nashville, Chattanooga & St. Louis Railway.

E. D. Mohr for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing fertilizer at Mount Pleasant, Tenn. By complaint, filed November 14, 1913, it alleges that the rates charged by defendants for the transportation of fertilizer in carloads from Mount Pleasant to points in Kentucky, Alabama, and Mississippi were unreasonable and unjustly discriminatory. Reparation is asked.

No commodity rates applied on fertilizer to a number of points to which complainant shipped; only combination rates or class rates, which exceeded the commodity rates applicable on like traffic to neighboring points. In some instances the rates applicable exceeded the rates in effect from Mount Pleasant to stations on each side of the point of destination. Rates have since been established on a parity with the rates to neighboring points.

The rates assailed to certain of the points involved, together with the present rates, are as follows:

Rates on fertilizer per ton of 2,000 pounds from Mount Pleasant.

To—	Former rate.	Present rate.	To—	Former rate.	Present rate.
Anton, Ky.....	\$3.00	\$1.80	Walton, Ala.....	\$2.85	\$2.21
Scottsville, Ky.....	2.40	1.80	Oldham, Miss.....	2.80	2.07
Hartford, Ky.....	3.00	2.00	Wenasoga, Miss.....	3.00	2.01
Cedar Grove, Ala.....	2.76	1.76	Nabors, Miss.....	3.00	2.20
Oden, Ala.....	2.91	2.21			

The Louisville & Nashville Railroad expresses willingness to make reparation on shipments which moved to the points named in this table, but the other defendants deny that the former rates were intrinsically unreasonable, and complainant's only evidence against them is their subsequent reduction. No reparation can be awarded on such shipments. Defendants' fourth section applications in which they ask authority to continue higher rates on fertilizer from Mount Pleasant to Oldham, Wenasoga, and Nabors, Miss., and Cedar Grove, Ala., than to more distant points to which the points named are intermediate were heard with the complaint and will be denied.

The remaining destination points involved are Tupelo, Corinth, Purvis, Richburg, Petal, Pelahatchie, Forest, and Morton, Miss., and Anderson, Boaz, and Stevenson, Ala. The rates assailed to these points also involved departures from the long-and-short-haul rule of the fourth section. Applications covering the situation were heard with the complaint, together with applications for authority to continue through rates on fertilizers from Mount Pleasant to Anderson higher than the aggregates of the intermediate rates to and from Gadsden, Ala. The rates to the points named will be considered separately.

TUPELO, MISS.

Tupelo is located on the Mobile & Ohio and the St. Louis & San Francisco railroads. The shipments involved were moved by the Louisville & Nashville Railroad to Birmingham, Ala., and by the St. Louis & San Francisco to destination, a total of 320 miles. A rate of \$2.60 per ton of 2,000 pounds was charged.

The shortest route is Louisville & Nashville to Sheffield, Ala.; Southern Railway to Corinth; Mobile & Ohio to destination; 176 miles. A rate of \$2.16 applied from Mount Pleasant to Verona, Miss., on the Mobile & Ohio, 4 miles south of Tupelo, a rate of \$2.43 to Sherman, Miss., on the St. Louis & San Francisco, 11 miles west of Tupelo, Tupelo being intermediate to both points. Complainant contends that the rate to Tupelo should be 1 cent less than to Verona,
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or \$2.15 per ton, citing the \$2.45 rate prescribed in *Montgomery Freight Bureau v. M. & O. R. R.*, 14 I. C. C., 374, on fertilizer from Montgomery, Ala., to Mhoons Valley, 191 miles, and a \$2.60 rate published by the New Orleans & Northeastern Railroad from New Orleans to stations on the Mobile & Ohio Railroad from Verona, Miss., 341 miles, to Kenton, Tenn., 498 miles. Other comparisons offered are as follows, rates stated per ton of 2,000 pounds:

Rates on fertilizer to Tupelo, Miss.

From—	Miles.	Rate.	From—	Miles.	Rate.
Mount Pleasant, Tenn.....	{ 1320 }	\$2.60	Montgomery, Ala.....	241	\$1.80
Memphis, Tenn.....	{ 178 }	1.40	Florence, Ala.....	108	1.40
Atlanta, Ga.....	314	2.80	New Orleans, La.....	346	2.80

¹ Route of movement.

² Short route.

Defendants state that the rates on all classes and commodities to interior Mississippi junctions reflect water competition on the Mississippi River between St. Louis, Mo., and New Orleans, La., and that rates to the river points and interior junction points are more or less related. The rates on fertilizer from Mount Pleasant to Tupelo and other junction points in the Mississippi Valley are made the same as the rates from Nashville, Tenn., while the rates from Nashville are definitely related to the rates from St. Louis and Cairo, Ill. The rates from Mount Pleasant to points on the Mobile & Ohio Railroad south of Tupelo, and to points on the St. Louis & San Francisco west of Tupelo lower than the rates to Tupelo, are attributed to an error by rate clerks in not following the course adopted many years ago of making the rates to local points on an arbitrary basis, but not to exceed the rates to common points beyond. Defendants propose to readjust the rates to points on the Mobile & Ohio and the St. Louis & San Francisco so that the rate to points south and west of Tupelo will not exceed the Tupelo rate. Defendants also compare the Tupelo rate from Mount Pleasant with the rates from and to numerous other points in southern territory.

The reasonableness of carload rates on fertilizer in different parts of the south has been considered in a number of cases. *Virginia-Carolina Chemical Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 1; *Same v. C., R. I. & P. Ry. Co.*, Id., 3; *Same v. St. L. & S. F. R. R. Co.*, Id., 5; *Same v. St. L. S. W. Ry. Co.*, 16 I. C. C., 49; *Montgomery Freight Bureau v. W. Ry. of Ala.*, 14 I. C. C., 150; *Same v. M. & O. R. R. Co.*, 14 I. C. C., 374; *Royster Guano Co. v. A. C. L. R. R. Co.*, 31 I. C. C., 458; and *Royster Guano Co. v. A. C. L. R. R. Co.*, 38 I. C. C., 190. The rate as applied over the route of movement compares favorably with the rates prescribed in these cases as reasonable

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for similar distances. We find that the rate is not shown to be unreasonable over the route of movement, but express no opinion concerning its propriety over the short route, as the Mobile & Ohio is not made a party defendant. The fourth section relief asked will be denied.

CORINTH, MISS.

Corinth is 126 miles from Mount Pleasant over the Louisiana & Nashville Railroad and the Southern Railway by way of Sheffield, Ala., and 184 miles over the same roads by way of Decatur, Ala. The shipments involved moved over both routes at a rate of \$2.40 per net ton. A rate of \$2 is asked.

A rate of \$2.01 applied from Mount Pleasant to Chewalla, Tenn., a local point on the Southern Railway west of Corinth; a rate of \$2.20 to Ramer, Tenn., and Rienzi, Miss., local stations on the Mobile & Ohio Railroad north and south of Corinth, respectively. A rate of \$2.10 was prescribed in *Montgomery Freight Bureau v. W. Ry. of Ala., supra*, from Montgomery, Ala., to Meehan Junction, 167 miles, and to Savoy, Miss., 163 miles. Rates from other points of origin to Corinth are cited also: \$1.40 from Memphis, 98 miles; \$2 from Mobile, Ala., 329 miles; \$2 from Chattanooga, 217 miles.

Defendants compare the rate charged with numerous rates from and to other points in the south, which in general are higher. The present rates from Mount Pleasant to points on the Southern Railway between Sheffield and Memphis and on the Mobile & Ohio Railroad between Humboldt, Tenn., and Meridian, Miss., are said to be low and in many instances to violate the fourth section. A realignment is proposed on a graduated mileage basis which would involve increased rates to most of the points. No change is proposed in the present rate to Corinth.

The present rates to points on the Southern Railway and the Mobile & Ohio Railroad evidently require readjustment, but the rates proposed to effect it are not involved except to the points covered by the complaint, and we express no opinion regarding them generally.

A rate of \$2 was prescribed in *Virginia-Carolina Chemical Co. v. St. L., I. M. & S. Ry. Co., supra*, on fertilizer from Memphis to points in Arkansas substantially as far from Memphis as Corinth is from Mount Pleasant by the short line; a rate of \$2.25 for a similar distance from Norfolk to points in North Carolina in *Royster Guano Co. v. A. C. L. R. R. Co.* The rates prescribed in each of these cases apply over single lines, while the haul from Mount Pleasant to Corinth is over two lines. But the rates prescribed in the later case of *Royster Guano Co. v. A. C. L. R. R. Co.*, 38 I. C. C., 88 I. C. C.

190, apply with a minimum of 24,000 pounds, while the minimum on traffic from Mount Pleasant to Corinth is 30,000 pounds.

We find that the rate charged from Mount Pleasant to Corinth was and is unreasonable over the route through Sheffield to the extent that it exceeded and exceeds \$2.25, but not that it was or is unreasonable over the route through Decatur.

No justification was offered by defendants for a higher rate from Mount Pleasant to Corinth than to points on the Southern Railway west of Corinth and to points on the Mobile & Ohio Railroad north and south of Corinth, to which Corinth is intermediate, and defendants' application for leave to continue such an adjustment will be denied.

PURVIS, RICHBURG, AND PETAL, MISS.

These points are located on the New Orleans & Northeastern Railroad. The short-line route to each of them is: Louisville & Nashville Railroad to Birmingham, Ala.; Alabama Great Southern Railroad to Meridian; New Orleans & Northeastern Railroad to destination. Purvis is 428 miles from Mount Pleasant by this route; Richburg, 418 miles; Petal, 411 miles. Complainant's shipments moved: Louisville & Nashville to New Orleans; New Orleans & Northeastern Railroad to destination; by which route the distances are: 690 miles to Purvis, 700 miles to Richburg, 707 miles to Petal. A rate of \$3.75 was charged. A rate of \$2.20 applied from Mount Pleasant to Meridian, and complainant contends that the rates to the points in question should not exceed the rate to Meridian by more than \$1.

A rate of \$3.05 and another of \$3.55 applied from Mount Pleasant to points south of Purvis to which Purvis is intermediate, and the rate to Petal by way of New Orleans exceeded and exceeds rates ranging from \$2.90 to \$3.60 from Mount Pleasant to points north of Petal to which Petal is intermediate. By way of Meridian or New Orleans the rates to all three points exceeded and exceed the \$3.20 rate applicable from Mount Pleasant to Ellisville and Lumberton, Miss., between which latter two points Purvis, Richburg, and Petal are located. A rate of \$3.20 also applies from Mount Pleasant to Hattiesburg, Miss., and the rates on fertilizer from St. Louis, Ohio River crossings, Memphis and Nashville, Tenn., are the same to Purvis, Richburg, and Petal, and to Hattiesburg. The rates involved are made by combination on Slidell, La., which point takes the New Orleans basis of rates.

Defendants state that the \$3.20 rate to Ellisville, Lumberton, and other junction points in Mississippi, such as Enterprise, Laurel, and Hattiesburg, is made \$1 over Meridian, and contend that there is no violation of the rules of the fourth section in the maintenance of

higher rates from Mount Pleasant to Purvis, Richburg, and Petal than from Mount Pleasant to the junction points named, for the reason that traffic to Purvis, Richburg, and Petal moves through New Orleans, while traffic to the junction points moves through the other junctions. It is admitted, however, that the rates under consideration depart from the rules of the fourth section with respect to other stations on the New Orleans & Northeastern Railroad. No justification is offered for the departures, and it is stated that they are to be rectified.

We find that the rate from Mount Pleasant to Purvis, Richburg, and Petal was and is unreasonable by the short routes to the extent that it exceeded and exceeds \$3.20, but not by the routes of movement. Higher rates over the short-line route to these points than to Ellisville, Hattiesburg, and Lumberton are unjustifiable, and the authority asked to continue rates on fertilizer from Mount Pleasant to Purvis, Richburg, and Petal in excess of the rates to more distant points to which they are intermediate will be denied.

PELAHATCHIE, FOREST, AND MORTON, MISS.

These points are from 49 miles to 69 miles west of Meridian and intermediate to Jackson, Miss. A rate of \$3.20 was charged to all three points. A rate of \$2.20 applied to Jackson. The rate to Jackson is asked, plus the 80-cent intrastate rate from Jackson to Meridian. The rate charged is a blanket rate applicable to all stations on the Alabama & Vicksburg Railway between Meridian and Jackson. A \$3.03 rate applies from Mount Pleasant to points between Jackson and Vicksburg.

Defendants state that the lower rates to points west of Jackson than to points east thereof are due to competition on the Mississippi River; that the general basis of rates on this traffic to points west of Jackson is 3 cents per 100 pounds, or 60 cents per ton, over the rate from Mount Pleasant to Jackson, which is the same as the rates from Nashville, and 5 cents per 100 pounds, or \$1 per ton, over the rate to Jackson and to points east of Jackson. On this basis the rates to stations between Meridian and Jackson would be \$3.20, and \$2.80 to points between Jackson and Vicksburg, Miss.; but the proportion which the Louisville & Nashville would receive out of the \$2.80 rate would be unremunerative, and this general basis of making rates to points between Jackson and Vicksburg has been disregarded for that reason and a rate of \$3.03 established. Defendants offered no justification of the departures described from the rules of the fourth section, and stated that they purposed correcting them.

In *Montgomery Freight Bureau v. M. & O. R. R. Co.*, *supra*, we established a rate of \$2.90 from Montgomery to stations in Mississippi on defendants' line from Fort Loring to Bogue, inclusive, for distances ranging from 284 miles to 321 miles from Montgomery. The distances from Mount Pleasant to the destinations under consideration are greater than the distances from Montgomery to Fort Loring and Bogue and not much less than the distances from Mount Pleasant to Purvis and Petal.

We find that the rates from Mount Pleasant to Pelahatchie, Forest, and Morton are not shown to be unreasonable, but that the fourth section relief asked should be denied.

ANDERSON, ALA.

Anderson is a local point on the Southern Railway, 4 miles farther from Mount Pleasant than Gadsden, Ala. A rate of \$2.40 was charged to Anderson. A rate of \$1.65 applied to Gadsden when complaint was filed. Complainant states that the intrastate rate from Gadsden to Anderson is 50 cents and contends that the rate from Mount Pleasant to Anderson should not have exceeded the sum of these two rates, \$2.15. The rate from Mount Pleasant to Gadsden has been increased since the hearing to \$2.05, so that the rate to Anderson should now be \$2.55, according to complainant's theory.

The intrastate rate from Gadsden to Anderson was not and is not now applicable to fertilizer of the kind shipped by complainant. The rate from Mount Pleasant to Anderson, 181 miles by the short line and 241 miles by the Louisville & Nashville and the Southern, compares favorably with rates fixed by us for similar distances in the cases previously cited.

We find that the rate involved is not shown to be unreasonable and does not depart from the aggregate of intermediates rule of the fourth section.

BOAZ, ALA.

The shipments to Boaz moved over the Louisville & Nashville through Boyles, Ala., to Attalla, and thence over the Nashville, Chattanooga & St. Louis to destination, 248 miles. A rate of \$2.85 was charged. Complainant gives the short route as: Louisville & Nashville to Columbia, Tenn.; Nashville, Chattanooga & St. Louis to destination, 157 miles; and states that by this route Boaz is intermediate to Attalla. A rate of \$1.65 applied from Mount Pleasant to Attalla, which complainant contends should not have been exceeded to Boaz. The Attalla rate has since been increased to \$2.05.

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As stated, a rate of \$1.65 applied on fertilizer from Mount Pleasant to Gadsden and identical rates applied to fertilizer material from Nashville and Memphis to Boaz and Gadsden. The \$1.65 rate has been increased since the complaint was filed to \$2.05 to both Gadsden and Attalla.

Defendants assert that rates on fertilizer from Mount Pleasant to points on the Nashville, Chattanooga & St. Louis were made a differential of 50 cents over the rate from Nashville, but not in excess of the lowest combination; that the rate on fertilizer from Nashville to Boaz is \$2.50; and that the rate to Boaz ordinarily would have been \$3, but that the rates to and from Attalla made a lower combination rate of \$2.85. They also state that the rate from Mount Pleasant to Attalla was lower than it should be; that the rate from Louisville to Birmingham was \$3.05; that the rate from Nashville to Anniston, Attalla, and Birmingham, Ala., should be \$2.05; and that the combination rate from Mount Pleasant to Boaz, based on a rate of \$2.05 to Attalla and a rate of \$1.20 beyond, would exceed the \$3 rate made by adding an arbitrary of 50 cents to the rate from Nashville. The rate from Mount Pleasant to Attalla has been made \$2.05. The long route on traffic to Boaz is said to give the Louisville & Nashville, the initial carrier, the long haul, and to be both more expeditious and more economical than the short-line route, which involves four branch lines of the Nashville, Chattanooga & St. Louis Railroad and a ferry transfer from Hobb's Island, Ala., to Gunter's Landing, Ala.

We find that the rate involved is not shown to be unreasonable. The lower rate to Attalla is applicable only over the Louisville & Nashville, and the fourth section is not violated by the higher rate to Boaz.

STEVENSON, ALA.

The rate charged to Stevenson was \$2.50. Traffic from Mount Pleasant to Stevenson moves: Louisville & Nashville to Nashville; Nashville, Chattanooga & St. Louis to destination. The rate charged was 50 cents over the rate from Nashville to Stevenson. A rate of \$2.10 applied and applies from Mount Pleasant to Chattanooga, to which point Stevenson is intermediate.

Stevenson is 169 miles from Mount Pleasant by way of Nashville; 129 miles by way of Columbia, Tenn., and the Nashville, Chattanooga & St. Louis Railway. A rate of \$1.76 applied from Mount Pleasant to Fackler, Ala., on the Southern Railway, 6 miles west of Stevenson, while the Southern Railway's distance scale rate for 130 miles on its Memphis division was \$1.80.

Defendants state that the lower rate to Chattanooga than to intermediate points is due to the rates maintained to Chattanooga by

other lines from points in Alabama and Georgia nearer than Mount Pleasant to Chattanooga, but add that they are willing to rectify all departures from the long-and-short-haul rule of the fourth section by increasing the rate to Chattanooga to \$2.50.

A rate of \$2.45 was prescribed in *Royster Guano Co. v. A. C. L. R. R. Co.*, *supra*, for distances ranging from 160 miles to 170 miles. As the traffic from Mount Pleasant to Stevenson moves over two lines and through mountainous country, the rate involved is not unreasonable by the route of movement. But the fourth section application involved will be denied.

The present rates from Mount Pleasant to Anton, Hartford, and Scottsville, Ky., Oldham, Wenasoga, and Nabors, Miss., and Cedar Grove, Oden, and Walton, Ala., were established during or before January, 1914, and no order relative to future rates to these points is necessary. To the other points of destination to which the present rates have been found unreasonable the rates found reasonable will be prescribed for the future.

This case was originally assigned for hearing at Nashville, Tenn., January 24, 1914. Defendants sought a continuance of this hearing for the reason that they were not prepared at that time to substantiate the various fourth section applications which had been assigned for hearing in connection with this complaint. Upon assurance from the defendants that they would admit the allegation of damage in the event the rates in issue were found unreasonable by the Commission, thus dispensing with the necessity of bringing complainant's witnesses to a second hearing, the complainant agreed to the continuance. The so-called second hearing took place at Memphis, Tenn., September 24, 1914, at which hearing, in pursuance of the agreement above referred to, no witness for complainant appeared for the purpose of proving that complainant had paid and borne the freight charges on the shipments involved. We therefore further find that complainant made shipments of fertilizer from Mount Pleasant to Corinth by way of Sheffield at the rate herein found unreasonable, and that, subject to proof of damage in the manner hereinafter outlined, complainant is entitled to an award of reparation upon such shipments, the measure of the reparation to be the difference between the charges assessed and those which would have accrued at the rate herein found reasonable.

Complainant should prepare a statement showing, as to each such shipment upon which reparation is claimed, the date of movement, points of origin and of destination, route, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, together with proof by affidavit that it paid and ultimately bore all freight charges on such shipments,

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which statement and proof of damage should be submitted to defendants for verification and proper certification. Upon receipt of these documents in proper form the matter will be given further consideration with a view to the authorization of an award of reparation.

Appropriate orders will be entered.

No. 7688.
CHAPIN & COMPANY

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY ET AL.

Submitted March 20, 1915. Decided March 31, 1916.

Rates charged for the transportation of distillers dried grain in carloads from Louisville, Ky., and corn oil meal and corn oil cake in carloads from Indianapolis, Ind., to eastern destinations, manufactured into mixed feed at Hammond, Ind., not found unreasonable. Complaint dismissed.

Cassoday, Butler, Lamb & Foster for complainants.

Winston, Payne, Strawn & Shaw for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of mixed feeds and grain products at Hammond, Ind. By complaint, filed December 26, 1914, it alleges that the rates charged by defendants for the transportation, between October, 1911, and December, 1913, of 41 carloads of distillers dried grain from Louisville, Ky., and 63 carloads of corn oil cake and corn oil meal from Indianapolis, Ind., to various points in Pennsylvania, New York, New Jersey, and New England, manufactured into mixed live-stock feed at Hammond, were unjust and unreasonable. Reparation is asked.

The facts are stipulated, substantially as follows:

The shipments were moved by the Chicago, Indianapolis & Louisville Railway, hereinafter called the Monon, to Hammond, and by the Michigan Central Railroad and connecting lines beyond. An intermediate switching service to and from complainant's warehouse

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at Hammond was performed by the Indiana Harbor Belt Railroad. Complainant's shipping instructions and the bills of lading showed the final destinations, the joint through rates, and that the shipments were to be stopped at Hammond for transit purposes. Charges for the through transportation were ultimately collected on the basis of the rates to and from Hammond. The rates charged are alleged by complainant, and admitted by defendants, to have been unreasonable to the extent that they exceeded the joint through rates.

Transit tariffs concurred in by defendants and effective during the period in question authorized the application of specific through rates on grain products manufactured into mixed feed at Hammond, with no additional charge for transit service, provided the tariff governing the movement from point of origin or rate-basing point permitted transit. Tariffs issued by the Monon, contemporaneously in effect, naming joint through rates on grain products from Louisville and Indianapolis to the destinations involved, contained a provision prohibiting the application of the rates named on transit shipments. Complainant was assured by the Monon, however, that the joint through rates were applicable in connection with the transit desired, and made the shipments in reliance upon that representation.

It is stated that the shipments from Louisville could have moved: Cleveland, Cincinnati, Chicago & St. Louis Railway to Hammond, Michigan Central Railroad and connecting lines beyond, on the basis of the joint through rates asked, and that joint through rates with transit at Hammond applied from points on other lines in the same general territory as Indianapolis. Since complainant's discovery that the joint through rates, with the transit in question, were and are inapplicable over the Monon it has diverted its traffic to other lines, and does not ask for relief for the future.

The allegation of unreasonableness rests partly upon the fact that the transit arrangement at Hammond was available in connection with joint rates effective over other lines. This fact, however, affords no basis for a finding that the rates attacked were unreasonable. *Simon Cook Co. v. Wabash R. R. Co.*, 21 I. C. C., 563; *Templeton & Sons v. C. & S. R. R. Co.*, Docket 5803, unreported. Neither can defendants' mere admission that the rates charged were unreasonable be accepted as conclusive. *Pacific Elevator Co. v. C. & St. P. Ry. Co.*, 17 I. C. C., 373.

Defendants admit that complainant was misled to its injury through the "ignorance, fault, and misrepresentations of the carriers," and the demand for reparation is based primarily on the misrepresentation. It is well settled, however, that the misrepresentation by a carrier of the rates legally applicable will not justify

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an award of reparation. Both shippers and carriers are charged with notice of tariff provisions, which were specific and clear in this case, and the fact that complainant may have been misled by defendants' representatives into believing that it was entitled to the benefit of the transit arrangement at Hammond affords no ground for relief. *Atlanta Milling Co. v. L. & N. R. R. Co.*, 31 I. C. C., 485.

Complainant argues, further, that the execution by the Monon of bills of lading containing conflicting provisions renders defendants responsible for the injury sustained, under Conference Ruling 286 (f). We can not accept this conclusion. The conference ruling referred to applies only to cases in which the initial carrier has a discretion or control in the matter of routing. It does not require that a carrier shall ascertain whether a competing line can transport a shipment at a lower rate, and, if so, turn the shipment over to its competitor. *McLean Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 349.

We find that the rates attacked are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

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No. 7062.

CATOOSA LIMESTONE PRODUCTS COMPANY

v.

WESTERN & ATLANTIC RAILROAD COMPANY ET AL

Submitted May 14, 1915. Decided March 31, 1916.

Rates on crushed stone in carloads from Graysville, Ga., to Chattanooga, Tenn., and to Jacksonville and other Florida points, not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

O. L. Bunn for complainant.

R. Walton Moore, E. H. Hart, and W. H. Fowle for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in crushing and shipping limestone, with its principal office at Chattanooga, Tenn., and a quarry and crushing plant at Graysville, Ga. By complaint, filed June 29, 1914, as amended, it alleges that the rates charged by defendants for the transportation of crushed limestone in carloads from Graysville to Chattanooga, and to points in Florida, are unreasonable and unjustly discriminatory. Rates from Graysville to Atlanta and certain other Georgia points also are attacked on the ground that they are excessive as components of through interstate rates. Reparation is asked.

Graysville is a local station on the Western & Atlantic Railroad, 16.5 miles southeast of Chattanooga, and 120 miles north of Atlanta, Ga. The Western & Atlantic assumed the burden of the defense and is hereinafter called defendant. All rates are stated in cents per net ton.

The crushed stone shipped is used principally for ballast and road-making purposes. It is a low-grade commodity, worth approximately 53 cents per ton at the quarry, requires only ordinary transportation equipment, is free from damage in transit, and generally loads to the full capacity of cars. The rate on limestone from Graysville to Chattanooga is 25 cents. For several years prior to June 9, 1915, defendant maintained a rate of 15 cents on limestone for fluxing purposes and a rate of 25 cents on limestone when used for other purposes. The 15-cent rate on limestone for fluxing purposes was increased to 25 cents on June 9, 1915, and this rate now applies on all limestone. The elimination of the special rate on fluxing stone

complied with our ruling that different rates may not be made on a particular commodity dependent upon the use to which it is put.

No stone has been used at Chattanooga for fluxing purposes in several years. Defendant insists that the 15-cent rate was abnormally low and that it was established in accordance with a practice of making low rates on limestone for fluxing purposes, on the theory that defendant would get its revenue from the transportation of the iron from the furnaces. The 25-cent rate is shown to be lower than rates prescribed by the railroad commissions of Georgia, Alabama, Virginia, Texas, and other southern states on like traffic for a distance of 16.5 miles. Other comparisons show that it is the same as, or lower than, the rates charged by other carriers for the movement of crushed limestone 16.5 miles in the same and in other territory. The 15-cent rate apparently was low for the service performed and is not alone sufficient to condemn the 25-cent rate.

The evidence adduced relative to the rates from Graysville to Georgia points, used in constructing through interstate rates, was confined almost entirely to the rate to Atlanta. Complainant contends that defendant's local rate of 60 cents on crushed stone from Graysville to Atlanta was excessive as a component of the through rates to Florida points. But there are no joint through rates from Graysville to the Florida points specified in the complaint and at the time of the hearing the lowest combination made on Dalton, Ga., or on Dalton and Jacksonville, Fla., and not on Atlanta. The following table shows the rates in effect at that time, the rates asked, and the ton-mile earnings under both sets of rates:

From Graysville to—	Distance.	Rate at time of hearing, per ton.	Revenue per ton-mile.	Rate sought, per ton.	Revenue per ton-mile.
	Miles.	Cents.	Mills.	Cents.	Mills.
Jacksonville, Fla.....	451	181½	4.0	135	3.0
Milledale, Fla.....	448	181½	4.0	135	3.0
Mayport, Fla.....	476	181½	3.8	135	2.8
Fernandina, Fla.....	443	181½	4.1	135	3.1
St. Augustine, Fla.....	488	241½	4.9	171	3.5
St. Petersburg, Fla.....	632	328	5.2	223	3.5
Lakeland, Fla.....	500	314½	5.3	215	3.6
Miami, Fla.....	817	401½	4.9	267	3.3

The rates to and from Dalton were the class P rates, less 20 per cent, governed by Georgia exceptions to the southern classification. On August 20, 1915, subsequently to the hearing, the rating on crushed stone in carloads was increased, by a change in the exceptions to the classification, to a straight class P basis. This has resulted in a slight increase in the rates from Graysville to the Florida points involved. Our findings will be confined to the rates in effect at the time of hearing.

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Complainant cites rates on sand, coal, and other commodities, between points in the same territory, some of which yield lower ton-mile revenues for shorter distances than the rates in issue. But defendant shows that the rates cited are influenced by competition and by other conditions which do not obtain for the rates assailed. Comparisons made by defendant show that the rates in effect at the time of the hearing were not out of line with the rates on crushed stone for similar distances in the same and other territory.

We find that the rates assailed are not shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed.

No. 7562.

UPDIKE GRAIN COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted July 21, 1915. Decided March 31, 1916.

Rate of 12 cents per 100 pounds legally applicable on corn in carloads from Ashton, Hospers, and Sheldon, Iowa, to Council Bluffs, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo., found not to have been unreasonable. Complaint dismissed.

E. P. Smith for complainant.

Limon Sholes for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

W. H. Jones for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain business, with its principal office at Omaha, Nebr. By complaint, filed December 10, 1914, it alleges that the charges collected by defendants for the transportation of three carloads of corn in December, 1913, and March and June, 1914, from Ashton, Hospers, and Sheldon, Iowa, to Council Bluffs, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo., were unreasonable and unjustly discriminatory. Reparation is asked.

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The shipments were moved to Council Bluffs by the Chicago, St. Paul, Minneapolis & Omaha Railway and the Chicago & North Western Railway. Two of the cars were reconsigned to Lincoln, one to Kansas City. The rates applicable to the movement beyond Council Bluffs are not assailed. The rates charged to Council Bluffs were combinations of the local rates to and from Sioux City, Iowa: 12.6 cents from Ashton, 12 cents from Hos-pers, and 12.4 cents from Sheldon. Complainant contends that charges should have been based on rates equal to 80 per cent of the sum of the local rates. Rates for two-line hauls based on 80 per cent of the intermediate rates were applicable on Iowa intrastate traffic, but not on interstate traffic when other rates were available. A joint rate of 12 cents per 100 pounds applied to Council Bluffs from each of the points of origin involved. Defendants admit an overcharge of 0.6 cent per 100 pounds on the shipment from Ashton and 0.4 cent per 100 pounds on the shipment from Sheldon.

We find that the rates legally applicable are not shown to have been unreasonable, and the complaint will be dismissed. The overcharges on the shipments from Ashton and Sheldon should be promptly refunded.

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No. 7891.
CONTINENTAL CAN COMPANY ET AL.
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted November 8, 1915. Decided March 31, 1916.

Tin cans are loaded in bulk in box cars, and for some years prior to February-March, 1915, money allowances were made by defendants when inside doors were furnished for the protection of bulk shipments in box cars. Since that time no such allowances have been made except on shipments of grain and flaxseed. Upon complaint that the withdrawal of these allowances was in violation of sections 1, 2, and 3 of the act, *Held*, That the carriers have justified the withdrawal.

Charles Conradis and A. B. Hayes for complainants.

G. S. Patterson, W. I. Cross, W. A. Parker, W. S. Burton, and H. A. Haines for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are corporations and firms engaged in the manufacture of tin cans, with their places of business at Baltimore, Md. By complaint, filed April 6, 1915, they allege that by reason of the cancellation of weight allowances for dunnage and of money allowances for inside car doors used in shipping cans in bulk, in carloads, defendants have imposed rates of freight for the transportation of cans that are unreasonable, unjustly discriminatory, and that subject complainants to undue disadvantage. Reparation is asked. The contention that the dunnage weight allowance should be continued has been abandoned, and the only issue presented is whether defendants should make a money allowance not exceeding \$2 per car for car doors furnished in loading tin cans in bulk.

In December, 1914, defendants canceled the provision in their tariffs which allowed the actual weight of dunnage, not exceeding 500 pounds, to be deducted from the weight of a shipment in box cars. In February and March, 1915, they canceled provisions for money allowances not exceeding \$2 per car for inside car doors supplied by the shipper in loading bulk freight other than grain and flaxseed. Both allowances had been made for many years. The cancellation of the weight allowances resulted in additional charges at tariff rates

on the actual weight up to 500 pounds of the dunnage used. The withdrawal of the allowance for inside doors also resulted in higher freight charges than were assessable before on identical shipments.

Baltimore is the center of the tin-can industry and ships about 8,000 cars of empty tin cans per year. From 60 to 65 per cent of these shipments consist of cans in bulk; the balance, of cans in boxes. Shipments of cans in boxes are not in issue. Tin cans are shipped in bulk rather than in crates or boxes for convenience of handling at the packing plants, many packing plants being provided with conveyors for unloading bulk shipments of cans from the cars directly into the warehouse.

When tin cans are loaded in bulk the car is first thoroughly cleaned; then lined with paper to prevent contamination of the cans by dust and dirt. The cans are piled in tiered rows in each end of the car with their axes parallel to the sides of the car. The tiers are carried nearly to the top of the car; the rows to the jambs of the car doors, where bulkheads are constructed from one side of the car to the other to keep the cans in place. The bulkheads divide the car into three sections, one at either end of the car and one in the center of the car between the car doors. In order to load the space between the doors it is necessary to construct inside doors to keep the cans from contact with the car doors. This method of loading tin cans in bulk has been followed for many years; and, presumably, will be continued whether or not allowances for dunnage and inside doors are made.

Witnesses for complainants testified that cans loaded in bulk between car doors without the protection of inside doors are always found jammed against the permanent doors of the car and generally are crushed when the permanent doors are opened. Complainants state further that it is impossible to load cans in bulk to the minima required under the tariffs unless inside doors are used, and that if inside doors are not used and the attempt is made to load cans to the full visible capacity of the car damage will result; also that the recent increases in rates on tin cans render the further increase which results from the cancellation of the allowances unjust. But the complaint does not put in issue the reasonableness of the rates on tin cans, or of the minimum carload weights required by defendants, and these questions therefore can not be considered.

Defendants rely upon what they conceive to be our findings in former cases, particularly *The Five Per Cent Case*, 31 I. C. C., 350, 408; *Dunnage Allowances*, 30 I. C. C., 538, 543; and *New York Shippers' Protective Assn. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 437, which they interpret as authorizing the conservation of their revenues by the withdrawal of dunnage allowances in all cases where
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dunnage is used instead of packing, or for the protection of the shipment. They insist that the withdrawal of allowances for the cost of inside doors furnished by shippers of bulk freight, other than grain or flaxseed, in box cars, is justified on similar grounds.

Allowances paid for inside doors furnished by shippers of grain and flaxseed in bulk are not involved except to the extent that such payments may involve violations of sections 2 and 3 of the act, but such shipments differ so widely from shipments of tin cans that they may be disregarded. So far as the record discloses, no allowance was ever made by the defendants for the cost of lining and bulkheading cars used for the transportation of tin cans in bulk, and none is sought. Following the cases cited above we find that defendants were justified in withdrawing the allowance for inside doors, and the complaint will be dismissed.

CLEMENTS, *Commissioner*, dissents.

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No. 7841.

THOMAS B. HAMMER

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted November 10, 1915. Decided March 31, 1916.

Charges imposed by defendants for the transportation of a carload of lumber from Wilmington, N. C., to Salem, Mass., not found unreasonable or unjustly discriminatory. Complaint dismissed.

F. W. Judd for complainant.

E. H. Hart for Atlantic Coast Line Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture of lumber at Wilmington, N. C., with headquarters at Philadelphia, Pa. By complaint, filed March 19, 1915, he alleges that the charges collected by defendants for the transportation of a carload of rough lumber from Wilmington to Salem, Mass., in December, 1912, were unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally August 29, 1913.

The shipment originated on the Atlantic Coast Line Railroad. The bill of lading specified Boston & Maine delivery, but without designating any rate or junction through which the shipment should move. The initial carrier routed the shipment through Richmond, Va., by way of the Richmond, Fredericksburg & Potomac Railroad, the Washington Southern Railway, the Baltimore & Ohio Railroad and connections beyond, for Boston & Maine Railroad delivery at destination. Charges were collected in the sum of \$124.74 on 46,200 pounds of lumber at a joint commodity rate of 27 cents per 100 pounds applicable over the route of movement. The same joint rate applied by way of Norfolk or Pinners Point, Va., but by that route exceeded the aggregate of the rates applicable to and from Norfolk, which were 9 cents to Norfolk and 15 cents beyond. Complainant contends that the shipment should have moved through Norfolk or Pinners Point, and that the joint rate of 27 cents in effect over that route was published in error and should not have

exceeded the sum of the intermediate rates. Effective March 5, 1913, the joint rate through Pinners Point was reduced to 24 cents.

The initial carrier was obliged to forward the shipment over the cheapest route available under the routing instructions given by the shipper, and as the joint rate was the same over both routes involved, this duty was fulfilled by the routing through Richmond. The joint rate is not shown to have been unreasonable over the route of movement by the existence of a lower combination rate over the route through Norfolk or Pinners Point, and as there is no other evidence against it the complaint will be dismissed.

No. 7792.

INTERNATIONAL FUEL COMPANY

v.

SPOKANE INTERNATIONAL RAILWAY COMPANY ET AL

Submitted November 8, 1915. Decided March 31, 1916.

Charges collected on a carload of coal from Corbin, British Columbia, to Spokane, Wash., not found to have been based on an erroneous weight.

R. J. Knott for complainant.

F. D. Allen for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coal business at Spokane, Wash., and is the successor to and owner of the assets of the firm of F. A. Dowes and R. L. Irwin, formerly engaged in business under the same name. By complaint, filed March 1, 1915, it alleges that the charges collected by defendants for the transportation of a carload of slack coal shipped April 2, 1912, from Corbin, British Columbia, to Spokane, were based on an erroneous weight. Reparation is asked. The claim was presented to the Commission informally March 24, 1914.

The shipment was made by complainant's predecessors and was weighed at the point of origin with the following result: Gross, 137,500 pounds; tare, 37,600 pounds; net, 99,900 pounds. Charges

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were collected in the sum of \$112.39 on 99,900 pounds at a rate of \$2.25 per net ton. Complainant contends that the shipment weighed only 95,290 pounds and asks reparation on that basis.

The weight claimed was ascertained by weighing the coal in 15 separate wagon loads over complainant's private scales. In support of the correctness of this weight complainant's witness testified that scales in Spokane are inspected frequently by the city authorities; that wagon loads of coal on the way to the consumer are often intercepted and reweighed over the city scales; and that dealers are subject to severe penalties for false weighing. The witness was unable to state when complainant's scales were last tested. The car in which the shipment was carried was weighed light at Spokane the day after the shipment was unloaded. The tare weight found was 38,000 pounds, which weight would have made the net weight found at the point of origin 400 pounds less than the billed weight. Contrary to complainant's suggestion, defendants' tariffs provide for the reweighing of carload shipments of coal at the request of the consignee and for the correction of freight charges, without charge for reweighing, when the reweighing discloses a variation of 500 pounds or more from the billed weight. The difference between the net weight on this shipment as billed and the weight that would have resulted if the actual tare weight of the car had been used is within the tolerance of 500 pounds approved *In Re Weighing of Freight by Carrier*, 28 I. C. C., 7.

The evidence does not justify a finding that the weight on which the charges involved were collected was erroneous, and the complaint will be dismissed.

88 I. C. C.

No. 8005.
McCAULL-DINSMORE COMPANY
v.
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted September 13, 1915. Decided March 31, 1916.

Shipment of shelled corn from Ritter, Iowa, to Kansas City, Mo., not shown to have been misrouted, and rate charged not shown to have been unreasonable. Complaint dismissed.

S. J. McCaull for complainant.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

F. G. Wright for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling grain, with its principal office at Minneapolis, Minn. By complaint, filed May 10, 1915, it alleges that the rate charged by defendants for the transportation of a carload shipment of shelled corn from Ritter, Iowa, to Kansas City, Mo., was unjust and unreasonable; and also that the shipment was misrouted. Reparation is asked.

The shipment weighed 63,450 pounds and moved November 24, 1913. No routing instructions were given by the shipper and the Chicago, St. Paul, Minneapolis & Omaha Railway routed the shipment over its own line to Omaha and the line of the Missouri Pacific Railway beyond. No joint rate applied and charges were collected in the sum of \$111.04, at a combination rate of 17½ cents per 100 pounds: 12 cents to Omaha and 5½ cents beyond; which was legally applicable over the route of movement. Complainant contends that the rate charged should not have exceeded 13½ cents.

A carload rate of 13½ cents applied on shelled corn from Kansas City to St. Paul, Minn., by way of the Chicago, Burlington & Quincy Railroad to Omaha, and the Chicago, St. Paul, Minneapolis & Omaha Railway beyond, which complainant evidently assumes was applicable in the opposite direction. No rate lower than the rate charged applied from Ritter to Kansas City by any route, and as no evidence was adduced to show that the rate assailed was unreasonable, the complaint will be dismissed.

No. 7858.

BOWIE LUMBER COMPANY, LIMITED,

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY.

Submitted November 20, 1915. Decided March 31, 1916.

Charges collected by defendant for the transportation of lumber in carloads from Ludivine, La., to Bowie, La., for milling, and reshipped to various interstate destinations, found to have been unlawful. Reparation awarded.

Hall, Monroe & Lemann for complainant.

C. W. Owen for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Bowie, La. By complaint, filed March 26, 1915, it alleges that defendant's refusal to apply its transit rules and regulations on 18 carload shipments of lumber moved during the period from March 21, 1913, to March 27, 1914, inclusive, from Ludivine, La., to Bowie, where a portion of each shipment was planed and reshipped with the part not planed to various interstate destinations, subjected complainant to unreasonable and unlawful charges. Reparation is asked. The claims were presented to the Commission informally within two years after they accrued.

The tariff rule in issue provided that "lumber, carloads, may be stopped in transit at stop-over point, planed or dressed or resawed and reshipped in carloads," the through rate to destination to be the rate from point of shipment or from the milling point, whichever was higher. The same tariff also provided that upon satisfactory evidence of reshipment of planed or dressed or resawed lumber defendant would refund the difference between the charges on the inbound shipment and charges on difference in weight between inbound and outbound shipments. The tariffs naming the rates to ultimate destinations provided that the rules of the individual carriers parties to the tariffs would apply relative to transit service. The rate applicable to the shipments to Bowie was 8 cents per 100 pounds, and the rate on the difference in weight 4 cents per 100 pounds, subject to a minimum charge of \$5 per car. The shipments were planed

in part only. Charges were collected on basis of the rate from Ludivine to Bowie, plus the rates from Bowie to final destinations on the weight of the rough lumber. Overcharges were collected.

Defendant based its refusal to apply its transit rule on the ground that the rule required the planing or dressing or resawing of the entire shipment. Complainant contends that the only condition imposed was that the entire shipment should move to destination. Effective August 28, 1913, defendant published a rule providing transit service on lumber planed, dressed, worked, or resawed, in whole or in part, and reshipped to destination.

We find that the operation of the tariff rule was not restricted to shipments of lumber wholly planed, dressed, or resawed; that charges assessed on the shipments in excess of those which would have accrued on the basis of the refund provided by the tariff were unlawful; that complainant made the shipments as described and paid and bore charges thereon herein found to have been unlawful; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued if the refund provided had been made, and that it is entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin and final destination, route, car number and initials, weight from Ludivine to Bowie and from Bowie to final destination, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared by complainant and verified by defendant we will consider the entry of an order awarding reparation.

33 I. C. C.

No. 7451.
KNAPP SUPPLY COMPANY
v.
OHIO ELECTRIC RAILWAY COMPANY.

Submitted March 10, 1915. Decided March 31, 1916.

Provision in defendant's tariffs for the nonacceptance for transportation of less than 10,000 pounds of iron pipe exceeding 10 feet in length found unreasonable.

G. W. Blain for complainant.

P. C. Martin for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the plumbing and heating material and supplies business at Union City, Ind. By complaint, filed October 30, 1914, as amended, it attacks as unreasonable the provision in defendant's tariffs against the acceptance for transportation of iron pipe more than 10 feet long in quantities less than 10,000 pounds. The establishment of a reasonable provision is asked.

For a number of years prior to October 16, 1912, defendant accepted iron pipe for transportation over its line without restriction as to size or quantity, but on that date its tariffs were amended to provide a higher rate for the transportation of lengths exceeding 6 feet. On March 18, 1913, the following provision was made, which is still in effect:

Pipe, iron, less than carload, exceeding 10 feet in length: In lots of less than 10,000 pounds not accepted; 10,000 pounds or more in one consignment, when loaded by shipper and unloaded by consignee, official classification basis.

Complainant's shipments move from Union City to points in Ohio and Indiana. They consist of pipe from 16 feet to 21 feet in length and from one-eighth of an inch to 10 inches in diameter. About 95 per cent consists of pieces from 16 feet to 20 feet in length and from three-eighths of an inch to 1½ inches in diameter. Pieces under 2 inches in diameter are tied in bundles weighing from 100 pounds to 300 pounds. The larger pieces are shipped separately. The average weight per shipment ranges from 300 pounds to 500 pounds.

Complainant contends that customers at local stations on interurban lines carry small stocks of pipe and that the tariff provision in controversy necessitates forwarding small shipments to stations on the steam lines nearest those on the interurban lines, and drayage to destination. Defendant urges that iron pipe moves over its line only to points not reached by steam lines; that it accepts pieces 10 feet or less in any quantity; that pieces exceeding 10 feet in length are not accepted in less than 10,000-pound lots, for the reason that such lengths can not conveniently be mixed with freight of the general character usually handled by interurban lines, but must be transported separately; that pipe 10 feet long or less can be loaded on the floor at one end of the car under other freight and can be conveniently unloaded, whereas longer lengths obstruct the doorways, preventing the use of trucks, and can not be unloaded at points intermediate to terminals without shifting the entire load and causing damage to other freight and delays in train service. Franchise restrictions in many towns through which defendant's line extends are said to render it impossible for defendant to continue the carriage of heavy freight, from which it is argued that the traffic handled by defendant properly should be restricted to packages.

Defendant is a member of the Central Electric Traffic Association, composed of interurban carriers operating between points in Ohio, Indiana, and Michigan, and is the only line in that territory that places restrictions upon the quantity and size of pipe that will be accepted for transportation. Iron pipe in long lengths undoubtedly is inconvenient to handle, but its transportation is attended with relatively no more inconvenience than attends the handling of pianos, canoes, water troughs, counters, and other articles enumerated in defendant's tariffs. Defendant is a common carrier engaged in interstate commerce and is bound under the express provisions of the act to accede to every proper application for service, subject only to such reasonable regulations as it may prescribe. It must accept less desirable traffic as well as that which is more desirable, and, although its best interest might be promoted by refusing to perform the service here in controversy, it has no right to refuse to transport iron pipe or any other article not dangerous to handle and which is ordinarily accepted for transportation.

We find that the tariff provision attacked is unreasonable, and that defendant should be required for the future to accept for interstate transportation less-than-carload shipments of iron pipe exceeding 10 feet in length, without limitation as to the weight tendered.

An order will be entered accordingly.

38 I. C. C.

No. 7901.
DODD & STRUTHERS
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted July 7, 1915. Decided March 31, 1916.

Rates on lightning-rod fixtures from Trenton, N. J., to Des Moines, Iowa, found legally applicable and not shown to have been unreasonable. Complaint dismissed.

F. W. Knoche for complainant.

E. M. Wentworth for Pennsylvania Railroad Company; Pennsylvania Company; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of lightning-rod fixtures at Des Moines, Iowa. By complaint, filed April 10, 1915, it alleges that the rates charged by defendants for the transportation of one carload and one less-than-carload shipment of steel wire from Trenton, N. J., to Des Moines, Iowa, were unreasonable and at variance with the legal tariff. Reparation is asked and the establishment of reasonable rates for the future.

The less-than-carload shipment weighed 6,737 pounds and was delivered in February, 1913. The carload shipment weighed 58,282 pounds and was delivered December 29, 1913. The claim covering the less-than-carload shipment was presented to the Commission informally on April 23, 1914. The route from Trenton to Chicago, Ill., is not clearly defined. Both shipments were delivered at destination over the Chicago & North Western Railway. The shipments were billed as steel wire, but on inspection were "set up" or corrected to lightning-rod fixtures. Charges were collected at the through class rates applicable on lightning-rod fixtures, which were 50 cents per 100 pounds for carloads, composed of the fifth-class rate of 31 cents to the Mississippi River and the fourth-class rate of 19 cents beyond; 89 cents per 100 pounds for less than carloads, composed of the third-class rate of 59 cents to the Mississippi River and the second-class rate of 30 cents beyond.

Complainant's witnesses referred to the fixtures variously, calling them twisted wire braces, lightning-rod braces, and lightning-rod fixtures. The braces are manufactured out of round galvanized-iron wire, one-fourth inch in diameter and from 34 inches to 40 inches long. Each brace is composed of three such wires compactly twisted together for about one-third of their length. The untwisted portions constitute legs for the braces. A malleable casting is welded on where the twisting stops, which has three small holes through which the wires pass and a larger hole for the lightning rod. The lightning rod is held in position by the casting and a loop at the top of the brace. The legs of the brace are flattened for about 2 inches and each leg has two nail or screw holes by which the brace is fastened to the building on which it is placed. Each brace weighs about 1½ pounds and invoices at from 9½ cents to 10 cents, or about \$5.56 per 100 pounds.

Complainant contends that the carload shipment should have taken a rate of 37.5 cents per 100 pounds; the less-than-carload shipment a rate of 51 cents, applicable to iron and steel articles, including wire. Its witnesses stated, however, that the braces shipped were not properly described as wire and its testimony as a whole deals with ratings and rates on such articles as bronze and brass valves, copper and galvanized-iron wire, ties, bindings and nails, and wire rope, the values of which are stated only in general terms.

Defendants show that there are different kinds and descriptions of lightning-rod braces and fixtures and that all kinds must be considered in fixing the classification ratings and rates. They state that the braces involved are more valuable than the wire of which they are made, and that they move in small volume in comparison with other iron and steel articles.

The second-class and fourth-class rates from the Mississippi River to Des Moines were reduced in the *Interior Iowa Cities Case*, 28 I. C. C., 64, and the carriers have reduced the carload rating on lightning-rod fixtures from fourth class to class A. The present less-than-carload rate applicable from the Mississippi River to Des Moines is 27.8 cents; the present carload rate, 13.8 cents.

We find that the rates charged were legally applicable and that neither they nor the present rates are shown to be unreasonable. The complaint accordingly will be dismissed.

88 I. C. C.

No. 7921.

PROGRESSIVE METAL & REFINING COMPANY ET AL.
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted July 22, 1915. Decided March 31, 1916.

Rate charged for the transportation of scrap copper and scrap brass in carloads and of scrap brass and slab zinc dross in mixed carloads from Chicago, Ill., to Milwaukee, Wis., found unreasonable and reasonable maximum rate prescribed for the future. Reparation denied.

O. M. Rogers for complainants.

R. H. Widdicombe for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Progressive Metal & Refining Company, a corporation engaged in smelting and refining metals at Milwaukee, Wis., and S. Silverstein and Meyer Pinsof, copartners, engaged in the metal and junk business at Chicago, Ill. By complaint, filed April 16, 1915, they allege that the rate of 12 cents per 100 pounds charged by defendant for the transportation of various carload shipments of scrap copper and scrap brass and mixed carloads of scrap brass and zinc slabs from Chicago to Milwaukee during the two-year period preceding the filing of the complaint was unreasonable and unduly prejudicial. Reparation is asked and the establishment of a rate not in excess of 5 cents per 100 pounds, minimum 36,000 pounds, for the future.

The shipments consisted of scrap copper and scrap brass in carloads and scrap brass and slab zinc dross in mixed carloads and moved over defendant's line between April 16, 1913, and April 16, 1915. Charges were collected at the fourth-class rate of 12 cents per 100 pounds, governed by the western classification. Complainants contend that the rate charged was unreasonable and unduly prejudicial in that lower rates were maintained by defendant on the following analogous articles of greater value: Railway car brasses, 4 cents per 100 pounds, minimum 36,000 pounds, between Chicago and Milwaukee, 85 miles; ingot copper, scrap brass or trimmings, copper slabs, and nickel crucibles, 5 cents per 100 pounds, minimum 20,000 pounds, from Milwaukee to North Chicago, 52 miles; brass

and copper ingots, pig brass, copper slabs, pig tin, nicked crucibles, brass rods, spelter, brass, copper, and german silver scrap and trimmings, 5 cents per 100 pounds, minimum 30,000 pounds, between Chicago and Kenosha, Wis., 52 miles; and brass, bronze, copper, and german silver, in sheets, copper and brass tubes, german silver or brass blanks, copper or brass wire, spelter, solder, brass castings and brass fittings, 8 cents per 100 pounds, minimum 20,000 pounds, between Chicago and Kenosha.

The western classification permits a carload mixture of scrap zinc and other specified junk, with scrap copper, brass, or bronze. The weight of the copper, brass, or bronze included in the mixture is $33\frac{1}{3}$ per cent of the total weight loaded in the car, and a class B rating, minimum 30,000 pounds, is prescribed. Defendant's class B rate between Chicago and Milwaukee is 7 cents per 100 pounds.

Defendant directs attention to the value of the commodities in controversy and states that numerous claims for loss in transit result from pilferage. It also urges in a general way that the rates cited by complainants in comparison afford no criteria of the reasonableness of the rates challenged for the reason that they apply in the main to shorter hauls and are controlled by dissimilar conditions.

We find that the 12-cent rate assailed was and for the future will be unreasonable to the extent that it exceeded and exceeds 8 cents per 100 pounds, minimum 36,000 pounds, but that it is not shown to be unduly prejudicial. Reparation will be denied because it does not appear that complainants paid and bore the freight charges and were the parties damaged.

An appropriate order will be entered.

38 I. C. C.

No. 8090.
MACGILLIS & GIBBS COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted November 12, 1915. Decided March 31, 1916.

Local distance rate from Tuscor, Mont., to Clark's Fork, Idaho, charged on shipments of lumber for beyond, found to have been lawfully applicable and its measure not being in issue, complaint dismissed.

F. M. Elkinton and S. J. Bolton for complainant.

L. R. Capron for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of lumber, with general offices at Milwaukee, Wis., and a planing mill at Clark's Fork, Idaho. By complaint, filed June 18, 1915, it alleges that the rate of 6 cents per 100 pounds, based on a minimum carload weight of 60,000 pounds, charged by defendant for the transportation of six carloads of lumber from Tuscor, Mont., to Clark's Fork, was unreasonable to the extent that it exceeded 4 cents per 100 pounds applied to the actual weight of the shipments. The shipments were not weighed and the reparation claimed is based on an estimated weight of 2,100 pounds per 1,000 feet of lumber.

The rate assailed was defendant's local distance rate applicable from and to the points named. Complainant's counsel stated at the hearing that the movements were parts of reshipping movements and amended the complaint to withdraw objection to the rate assailed as a local rate, leaving it challenged only as a proportional rate.

The lumber shipped was purchased at a sawmill near Tuscor, to which point it was necessary to haul it by wagon. Before purchasing it, complainant requested defendant to provide a lower rate than obtained at the time, and, as the roads were in bad condition and wet weather threatened, further requested defendant to publish the lower rate on less than statutory notice. A rate of 4 cents per 100 pounds, minimum 40,000 pounds, applicable to lumber "to be manufactured, finished, or graded and reshipped" was established October 8, 1913, with our permission. But the shipments were forwarded during the

latter part of the preceding September and charges were collected on them in the sum of \$216.

There is no evidence that the lumber shipped actually was re-shipped from Clark's Fork or of the conditions of reshipment and the ultimate destination if it was reshipped. Defendant expressed willingness on our informal docket to make reparation, but later withdrew its offer, and the record affords no other basis for a finding that any rate other than the local rate should have been applied.

Clark's Fork is only 34 miles from Tuscor, but the complaint against the 6-cent rate as a local rate for that distance was withdrawn and it is not shown to have been unreasonable in this record.

An order will be entered dismissing the complaint.

No. 8100.

MARSHALLTOWN BUGGY COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted September 28, 1915. Decided March 31, 1916.

Rate charged for the transportation of buggy bodies, in the white, in less than carloads, from St. Louis, Mo., to Marshalltown, Iowa, not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

F. W. Knoche for complainant.

F. S. Hollands for Chicago, Burlington & Quincy Railroad Company and Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of wagons and buggies at Marshalltown, Iowa. By complaint, filed June 19, 1915, it alleges that the rate charged by defendants for the transportation of two less-than-carload shipments of buggy bodies, in the white, crated, from St. Louis, Mo., to Marshalltown, was unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future.

The shipments weighed 1,800 and 2,100 pounds, respectively, and moved April 25 and July 18, 1914. The Chicago, Burlington &

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Quincy Railroad originated both shipments, at St. Louis. One shipment was delivered at Marshalltown by the Chicago Great Western Railroad; the other by the Iowa Central Railway, now the Minneapolis & St. Louis Railroad. Both shipments were described in the bills of lading as crates of buggy bodies, in the white. The western classification rates less-than-carload shipments of this description one and one-half times first class. A rate of 91.5 cents per 100 pounds was applicable on this basis. One shipment apparently was overcharged, as the expense bill filed in the record indicates that the charges on it were assessed at a rate of 94.5 cents per 100 pounds.

Complainant's principal evidence against the rate assailed is a commodity rate of 67 cents per 100 pounds that was applicable on less-than-carload shipments of buggies, knocked down and boxed or crated, with wheels, seats, and tops inside, and not exceeding 54 inches in height. The only witness for complainant had no personal knowledge of the composition of the shipments in controversy or of the payment of freight charges thereon, and was unable to testify concerning the conditions surrounding the transportation of buggies and buggy bodies. Defendants state that a buggy body is a wooden frame, very light and fragile; and that a complete buggy, knocked down and packed, with iron axles, springs, wheels, and top, loads more heavily and is more desirable as traffic than a buggy body.

We find that the rate assailed is not shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed. If either shipment was in fact overcharged, the carriers concerned should make refund to the parties entitled to it.

88 I. C. C.

No. 8325.
C. S. EMERY & COMPANY
v.
BOSTON & MAINE RAILROAD.

Submitted January 10, 1916. Decided March 31, 1916.

1. Shipments of freight from Canada to the United States entered at Newport, Vt., are consigned to brokers at Newport who pay the customs duties and forward the shipments to the ultimate consignees. Defendant's agent at Newport is also a licensed customs broker and defendant permits him to "expense forward" on the waybills that accompany the shipments the customs duties which he pays, together with his brokerage fees. Other licensed customs brokers are denied this service. Motion for dismissal of complaint for want of jurisdiction denied.
2. The Commission has jurisdiction over the domestic movement of traffic originating in Canada.
3. The duty of carriers not to discriminate between persons is owed only to patrons of their transportation service, but customs brokers who act as consignees at ports of entry and who forward the shipments consigned to them for entry to the ultimate consignees are patrons of the transportation service afforded by the carrier employed.
4. The duty of carriers not to discriminate between shippers obtains for voluntary as well as for compulsory services.

W. A. Dane for complainants.

E. J. Rich and *W. A. Cole* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Curtis S. Emery and Donald Emery, copartners, doing a customs-house brokerage business at Newport, Vt., under the firm name of C. S. Emery & Company. The facts, as we understand them from the pleadings, are as follows: Defendant transports property from various points in Canada to various points in Vermont and other states, which is entered at Newport as a port of entry of the United States. Defendant's agent at Newport is also a licensed customs broker. Shipments of freight from Canada for entry at Newport are consigned to customs brokers there who pay the customs duties and forward the shipments to the ultimate consignees. Defendant permits its agent at Newport to "expense forward" to the ultimate consignees the customs duties which he pays, together with his brokerage fees, on the waybills that accompany the shipments.

but refuses to accord the same privilege to complainants or other brokers, who must accordingly secure themselves as best they may. A circular issued by defendant to agents at numerous points in Canada states that in order to avoid delay and demurrage all invoices of merchandise for customs entry at Newport should designate defendant's agent at Newport as consignee. Defendant's agent is equally available to all and treats alike all who employ him. Shippers are not actually required, however, to employ him, as defendant's circular advising his employment is merely advisory and not mandatory. Complainants allege that defendant discriminates against them unjustly in favor of its own agent. Reparation is asked and the removal of the discrimination. Defendant denies that the discrimination is unjust, but, in addition, challenges our jurisdiction and moves to dismiss the complaint on the grounds that the act to regulate commerce withholds jurisdiction over traffic from Canada to the United States and that it does not prohibit discrimination by carriers between customs brokers as brokers, but only between patrons of the transportation service afforded by carriers. The question of jurisdiction was ordered to be argued before hearing on the merits and is the only question decided in this report.

Neither of defendant's objections to our jurisdiction is well taken.

Traffic from Canada to the United States is as much within our jurisdiction to the extent of its movement within the United States as traffic from over seas or from one state to another. We have held this repeatedly and are not persuaded by defendant that we have been wrong. See *Carey Mfg. Co. v. G. T. W. Ry. Co.*, 36 I. C. C., 203; *International Paper Co. v. D. & H. Co.*, 33 I. C. C., 270. The discrimination alleged by complainants is practiced, if at all, after the shipments from Canada have been cleared of customs duties and entered at Newport and in connection with their transportation within the United States from Newport to their ultimate destinations.

The duty imposed by the act upon common carriers not to discriminate unjustly between persons undoubtedly is owed only to patrons of the carriers as such, and carriers owe no duty not to discriminate between customs brokers merely as brokers. *Donovan v. Penn. Co.*, 199 U. S., 279; *Jones v. St. L. & S. F. R. R. Co.*, 12 I. C. C., 144; *Southwestern Produce Distributors v. Wabash R. R. Co.*, 20 I. C. C., 458; *Cosby v. Richmond Transfer Co.*, 23 I. C. C., 72. But complainants and defendant's agent at Newport do not deal with defendant merely as brokers. Since they are named as the consignees of the shipments which they handle, act as consignees, and forward the shipments on from Newport to their ultimate destinations, they occupy the position of shippers and patrons of defendant's transportation service entitled to nondiscriminatory treatment from defendant both in respect

of the services which it is bound to perform for shippers and of any services which it may volunteer. We found in *Southwestern Produce Distributors v. Wabash R. R. Co.*, *supra*, that a carrier may lease a part of its terminal property to one fruit and vegetable auction company for use in the conduct of its auction business and deny similar leases to competing companies without being guilty of unlawful discrimination. We stated, however, that the lessee only occasionally, and then entirely inadvertently, acted as consignee of the fruits and vegetables which it sold, and that if the practice in that regard were different "the case might stand in quite a different light." The question thus reserved was actually presented in the *St. Louis Terminal Case*, 34 I. C. C., 453, in which certain warehouse companies complained that carriers serving St. Louis, Mo., were unduly preferring certain transfer companies that operated off-track stations for the carriers and private warehouses for themselves. Both the complainants and the transfer companies acted as consignees of shipments intended by the original shippers for storage in their private warehouses or for distribution by them to the ultimate consignees. When the transfer companies acted as consignees of shipments intended by the real shipper for storage in their warehouses they secured delivery at their warehouses without expense, while their competitors, acting in a similar capacity, were at the expense of draying their shipments. We found that—

A warehouseman, as such, has no special rights under the act. But when a warehouseman acts as a consignee or consignor he becomes a shipper and has all the rights of a shipper under the act. He stands, in fact, in the shoes of a shipper and may make any complaint either of rates or practices that his principal, the real shipper, might himself make.

The complaint therefore raises the question whether defendant may lawfully assist one of its shippers to collect his own private charges against his consignee and refuse similarly to assist other shippers, which question is clearly within our jurisdiction for the plain reason that we are authorized to scrutinize all kinds of discrimination between shippers, whether in compulsory services or voluntary.

We find that the questions involved in the controversy are within our jurisdiction and that defendant's motion to dismiss the complaint for want of jurisdiction must be denied. It will be so ordered, and the case assigned for hearing.

33 I. C. C.

No. 7306.

AMERICAN CEMENT PLASTER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 3, 1915. Decided March 29, 1916.

Rates on cement plaster in carloads from Acme, Tex., to points in other states, not found to be unreasonable but held to be unduly prejudicial.

J. S. Burchmore and L. M. Walter for complainant.

T. J. Norton and A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; and Panhandle & Santa Fe Railway Company.

C. P. Dowlin for Fort Worth & Denver City Railway Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The complainant is a Kansas corporation engaged in the manufacture and sale of cement plaster and other gypsum products, having plants at Acme, Tex., and points in other states. It here attacks as unreasonable and unjustly discriminatory the rates on cement plaster in carloads from Acme, Tex., to points on the line of the Atchison, Topeka & Santa Fe Railway, hereinafter referred to as the Santa Fe, in the states of Oklahoma, Kansas, Colorado, Missouri, Iowa, and Illinois. The alleged unlawful discrimination and preference are predicated upon a comparison with the rates available to complainant's competitors shipping the same product from Acme and Oriental, N. Mex., to the same destinations. One of these competitors, the Acme Cement Plaster Company, has mills both at Acme, Tex., and Acme, N. Mex.

There is no proof that the rates under attack are unreasonable *per se*. The only issue requiring consideration is that of discrimination and preference under section 3 of the act to regulate commerce.

The complainant's mill is located on a short spur connecting with the main line of the Fort Worth & Denver City Railway Company at Acme, Tex. The shipping point is named Agatite in the tariffs, but it has been referred to in evidence and briefs as Acme, and will be so named for the purposes of this case. Acme, Tex., is 139 miles south

of Amarillo, Tex., via the line of the Fort Worth & Denver City Railway, at which point connection is made with the Santa Fe for destinations in northern Oklahoma and other states. Acme and Oriental, N. Mex., are located on the Pecos Valley line of the Santa Fe, the former 194 miles, the latter 272 miles southwest of Amarillo. The distances from Acme, Tex., are therefore less than from Acme, N. Mex., by 55 miles, and less than from Oriental, N. Mex., by 133 miles.

The rate adjustment attacked is shown in the following table in which are compared rates on cement plaster in carloads, stated in cents per 100 pounds, from Acme, Tex., and Acme, N. Mex., via the Fort Worth & Denver City and the Santa Fe to representative points on the line of the latter carrier:

To—	From Acme, Tex. (minimum carload weight, 30,000 pounds).			From Acme, N. Mex. (minimum carload weight, 30,000 pounds).		
	Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Woodward, Okla.....	308	¹ 15.0	9.7	363	13.0	7.2
Kiowa, Kans.....	352	15.0	7.9	437	13.0	5.9
Wellington, Kans.....	450	15.0	6.7	505	13.0	5.1
Newkirk, Okla.....	497	¹ 15.0	6.0	532	¹ 13.0	4.7
Emporia, Kans.....	577	15.0	5.2	632	13.0	4.1
Osage City, Kans.....	604	15.0	5.0	659	13.0	4.0
Topeka, Kans.....	638	15.0	4.7	693	13.0	3.8
Kansas City, Mo.....	690	15.0	4.3	745	13.0	3.5
Webber, Kans.....	700	17.0	4.9	755	15.0	4.0
Fort Madison, Iowa.....	911	21.0	4.6	966	19.0	3.9
Stronghurst, Ill.....	935	¹ 22.5	4.8	990	¹ 20.5	4.1
Chicago, Ill.....	1,148	¹ 25.0	4.4	1,203	¹ 23.0	3.8

¹ Minimum carload weight, 40,000 pounds.

The rates above named as applicable from Acme, N. Mex., are also in effect from Oriental. The rate of 13 cents from Acme, N. Mex., is blanketed to stations on the Santa Fe from Goodwin, Okla., 326 miles, to St. Joseph, 764 miles. To a number of competitive points the St. Louis & San Francisco Railroad Company and the Missouri, Kansas & Texas Railway Company carry the same rates from Acme, Tex., as are named by the Santa Fe from Acme and Oriental, N. Mex., but at all noncompetitive points on the Santa Fe the rates published by that carrier are uniformly lower from the New Mexico points than from Acme, Tex.

To Chicago a rate of 20 cents is applicable from Acme and Oriental, N. Mex., with a minimum weight of 60,000 pounds. To Stronghurst, Ill., from the same points a rate of 17.5 cents is in effect with the same minimum. Rates on cement plaster, with the minimum weight of 60,000 pounds, are not published by the Santa Fe for application from Acme, Tex., to the points above named. Other lines of railway,

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however, name these lower rates from Acme, Tex., to Chicago and certain other points, applicable to the higher minima. Where the minimum weights are 40,000 pounds or lower from Acme, Tex., and from Acme and Oriental, N. Mex., there is a differential of 2 cents in favor of the latter points to all noncompetitive Santa Fe stations, and in a few cases lower rates are in effect from the New Mexico mills with a 60,000-pound minimum, an adjustment which is not accorded by the defendant to Acme, Tex. The desire of the complainant is to secure a rate adjustment to Santa Fe stations which is upon an equality with that available to its New Mexico competitors.

The defendants contend that New Mexico does not afford sufficient markets for the products of its cement plaster mills, and that the tonnage of all commodities secured by the Santa Fe in that state is comparatively small; that to afford these mills an outlet in other states and thus to increase its tonnage the Santa Fe has established rates from the New Mexico points which yield earnings considerably lower per ton-mile than the average earnings of its entire system from the transportation of the same commodities; and further, that as the points of origin and destination are on its own line, the Santa Fe receives all of the revenue; that the rates thus established are lower than it is willing voluntarily to publish for application from a point on the line of another carrier with which the revenue must be divided. For the movement from Acme, Tex., to Amarillo the Fort Worth & Denver City Railway receives $3\frac{1}{2}$ cents per 100 pounds as its division of the through rates, and it is stated that any reduction in rates from that point of origin would have to be absorbed wholly by the Santa Fe.

In determining the issue as to undue prejudice here involved consideration should be given to the comparatively low level of the rates on cement plaster from Acme, Tex., and to the necessary division of the revenue between the carriers. The average net ton-mile revenue on cement plaster and lime upon the Santa Fe for 1914 was 9.73 mills. To given representative points on the Santa Fe in Oklahoma, Kansas, Colorado, Missouri, and Illinois, the ton-mile earnings from Acme, Tex., varied from 4.07 mills for a haul of 1,106 miles to 9.93 mills for a haul of 302 miles, and averaged 5.65 mills. Upon the movement from that point, however, the distances are uniformly less than from Acme, N. Mex., while the differential of 2 cents for the two-line haul and the division to the initial line remain the same, although the rate increases to the more distant points. It also appears that the lower rates with higher minima which are in effect from the New Mexico points have not been accorded to Acme, Tex.

As has been shown, the rate of 13 cents from Acme and Oriental, N. Mex., is blanketed to certain stations on the Santa Fe for an aver-

age distance of over 500 miles. To points taking higher rates via that carrier than this group, the rates from Acme, Tex., should not exceed those in effect from Acme and Oriental, N. Mex. Accordingly, we are of opinion and find that the rates here attacked are unduly prejudicial to the complainant upon shipments of cement plaster in carloads from Acme, Tex., to all those points on the Santa Fe embraced in the complaint which take rates from Acme and Oriental, N. Mex., on this commodity higher than 13 cents, as shown in Santa Fe system tariff No. 8125-F, I. C. C. No. 6069, effective July 1, 1912, to the extent that the rates from Acme, Tex., exceed the rates from Acme, N. Mex. No proof of damage having been made with respect to the discrimination here found to exist, reparation is denied. An order will be entered accordingly.

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No. 7595.

NATIONAL DOCK & STORAGE WAREHOUSE COMPANY
v.
BOSTON & MAINE RAILROAD.

INVESTIGATION AND SUSPENSION DOCKET No. 662.
TERMINAL REGULATIONS AT BOSTON, MASS.

Submitted November 10, 1915. Decided March 20, 1916.

1. Defendant's practice of absorbing switching charges of connecting lines to and from Commonwealth pier while refusing to absorb switching charges of connecting lines to and from complainant's dock found unduly prejudicial.
2. Proposed discontinuance of absorptions of switching charges of connecting lines to and from Commonwealth pier and of wharfage charges at said pier, justified.

Robert Homans for complainant.

E. J. Rich and *W. A. Cole* for Boston & Maine Railroad.

H. C. Attwill and *H. W. Barnum* for Commonwealth of Massachusetts.

F. M. Ives for New England Paper & Pulp Traffic Association, intervener.

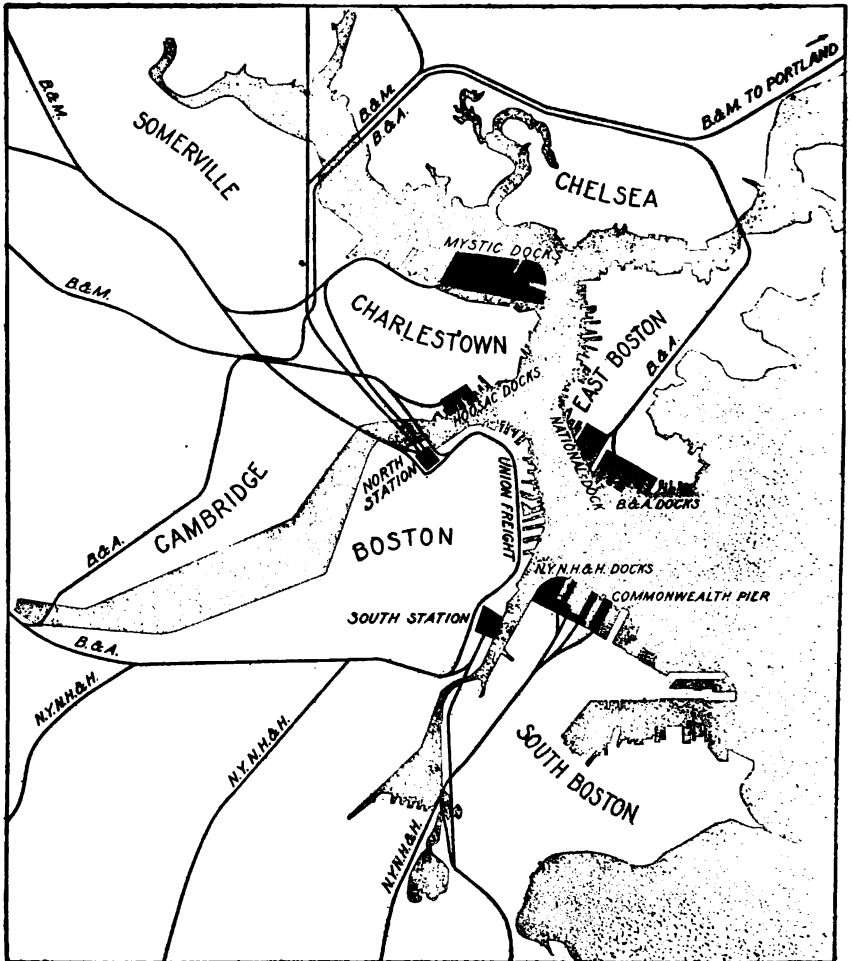
REPORT OF THE COMMISSION.

McCHORD, Commissioner:

These proceedings concern the practices of the Boston & Maine Railroad in connection with the absorption of connecting line switching charges to and from docks at Boston, Mass., and are so closely related that they will be disposed of in one report.

The location of the various docks and their rail connections may be more readily understood by referring to the annexed map. The Boston & Maine has docks located on the north and south sides of the Charlestown peninsula, and known as the Mystic docks and Hoosac docks, respectively. The docks of the New York, New Haven & Hartford Railroad Company, hereinafter termed the New Haven, are at South Boston, and those of the Boston & Albany Railroad Company at East Boston. In addition to the docks owned or controlled by the rail carriers there are various other docks at Boston, two of which are involved in these proceedings. One, con-

tiguous to the Boston & Albany docks, is the dock of complainant, hereinafter termed the National dock, which is served by the Boston & Albany Railroad; and the other is Commonwealth pier, owned and operated by the commonwealth of Massachusetts. It adjoins the New Haven docks and is reached only by the rails of that road. So far as rail service is concerned the National dock and Commonwealth



pier are in substantially the same position as the railroad docks which they adjoin.

For many years prior to 1913 it had been the practice of all the roads entering Boston to absorb the switching charges to and from the docks of connecting lines on import and export freight moving to or from territory west of the Hudson River, and, broadly speaking, beyond New England and immediately contiguous territory on the

north; but on such freight moving to or from points within those limits, constituting the greater portion of the tonnage, the connecting line switching charges were collected in addition to the Boston rate. The natural result of this policy was that import freight destined to interior New England points would seek the dock of that carrier which could make the delivery at destination; and similarly, a private dock, handling import freight for interior points, was largely confined to the handling of traffic with points in the territory of the rail carrier serving that dock. For this reason the railway freight handled by the National dock is almost exclusively that moving to or from Boston & Albany territory. Import freight for Boston & Maine territory ordinarily is handled at the docks reached directly by that carrier. Such shipments as arrive at the National dock destined to Boston & Maine territory must be hauled by the Boston & Albany to East Somerville, a distance of about 6 miles, for delivery to the Boston & Maine. For this service the usual charge of the Boston & Albany is $2\frac{1}{2}$ cents per 100 pounds, or 50 cents per ton; and the freight must still pay the full Boston rate to destination.

With freight arriving at Commonwealth pier, destined to Boston & Maine territory, the practice is different. The railway terminal of the Boston & Maine is at North station and the rail connection with Commonwealth pier is effected by the line of the Union Freight Railroad extending from the Boston & Maine terminal through the business section of Boston to a connection with the New Haven near South station, thence by the New Haven to Commonwealth pier. The total distance between the Boston & Maine terminal and Commonwealth pier is not accurately stated, but is somewhat less than 6 miles. For transporting freight between Commonwealth pier and the Boston & Maine terminal a joint switching charge of 60 cents per ton is published, of which 20 cents per ton accrues to the Union Freight Railroad and 40 cents to the New Haven, the division to the latter including the service of loading or unloading at the docks. The Commonwealth pier charges 10 cents per ton for wharfage, and storage on freight after six days. The charge of 60 cents per ton for switching cars containing 6,000 pounds or more and 80 per cent of the wharfage is absorbed by the Boston & Maine on import and export freight moving to or from points within the territorial limits before described. This absorption is provided for in a contract between the Boston & Maine, the New Haven, and the state of Massachusetts, dated July 1, 1912, whereby the carriers agreed to apply the Boston rate, so far as they legally might, to all freight to and from Commonwealth pier, concerning which some historical facts should now be given.

By an act passed in 1911, the state legislature authorized the creation of a board to be known as the directors of the port of Boston

and charged it with the duty of investigating the needs of the port and the making and carrying out of plans for the comprehensive development of the harbor at the expense of the state. It was authorized to acquire necessary sites and to construct thereon "such piers with buildings and appurtenances, docks, highways, waterways, railroad connections, storage yards, and public warehouses" as in the opinion of the directors might be desirable. Pursuant to this authority the directors secured possession of the pier site at South Boston, then owned by the state and under lease to the Old Colony Railroad, and by the expenditure of about \$3,650,000 constructed the pier now known as Commonwealth pier. The ultimate purpose of the state was so to improve the terminal facilities and operations at Boston as to attract vessels and trade to that port in competition with other Atlantic ports. The scheme included a possible lighterage system for the harbor. In addition to the provision of adequate facilities it was the aim of the directors to have the Boston rate applied upon all freight delivered to or received from any dock at the port. Tariffs filed pursuant to the contract aforesaid became effective in the spring of 1913. The effect of the absorptions under those tariffs is to make the expense to the shipper over the Boston & Maine the same whether the freight moves over Commonwealth pier or over the Hoosac or Mystic docks.

On December 19, 1914, the complainant, a corporation organized under the laws of Massachusetts, filed a complaint with us alleging that the Boston & Maine, in absorbing the charges to and from Commonwealth pier while refusing to absorb the charges to or from the complainant's dock at East Boston, is guilty of unjust discrimination, which the Commission is asked to remove. The Boston & Maine neither admits nor denies the charge, but maintains that if undue discrimination is found it should be removed by requiring the discontinuance of the present absorptions rather than by the absorption of the Boston & Albany charge to and from the complainant's dock. To prevent the adoption of the former alternative, the state of Massachusetts, through its attorney general, intervened in support of the present practice. The Boston & Maine, nevertheless, on May 19 and May 27, 1915, filed tariffs to become effective on June 20 and June 28, 1915, canceling the absorptions. Upon application of the intervener the supreme judicial court of Massachusetts thereupon issued a temporary injunction forbidding the Boston & Maine to discontinue the absorptions under the contract with the state. Upon protests in behalf of the state and of certain shippers, and at the request of the carrier itself, the tariffs were suspended until October 18, 1915, and later until April 18, 1916. We thus have before us for determination two questions: First, is the present practice of the Boston & Maine unduly prejudicial to complainant; and, second, may the Boston &

Maine discontinue its absorptions, either as a means of removing such discrimination or for other reasons?

Under the law we can give no weight to the fact that the practices are the subject of contract or to the fact that Commonwealth pier is owned and operated by the state, except in so far as those facts may have evidential bearing upon the characteristics of the rates and practices of the carriers and may assist in defining their status under the act.

In connection with the charge of unlawful discrimination, importance is attached to a comparison of the character and capacity of the various piers and docks. Complainant's pier is about 600 feet long and 200 feet wide and is capable of receiving a vessel 450 feet long and 60 feet wide. A larger vessel having a small amount of freight to be transferred can be accommodated at the end of the pier. Complainant makes no charge to vessels for the use of the pier. Freight delivered by vessels is placed in complainant's warehouses adjoining the pier or is reshipped via the Boston & Albany or Boston & Maine, the last constituting but a very small proportion of the tonnage. Where freight does not go into storage, complainant charges the Boston & Albany 30 cents per ton for loading its cars and the shipper is charged 15 cents per ton for wharfage. Most of the freight received at this pier is wool and hides. As most of the New England woolen mills and shoe factories are located at points on the Boston & Maine, the interest of the complainant in the rates to those points is apparent. Complainant does not appear to be a shipper but derives profit through the warehousing, wharfage, and handling incident to the movement of the freight over its pier.

The Hoosac and Mystic docks are more extensive than that of complainant and can accommodate vessels in greater number and of greater size and draft. They are leased from the Fitchburg Railroad Company and the Boston & Lowell Railroad Company, respectively, the Boston & Maine assuming maintenance and taxes, and paying dividends on stock of the owning roads as rental. Prior to the completion of Commonwealth pier these docks accommodated practically all of the import and export traffic of the Boston & Maine, which is about 80 per cent of the entire import and export traffic of the port. It appears, however, that these docks can not satisfactorily accommodate the largest modern steamers; and one of the purposes of the port development by the state was to provide docking facilities for such vessels. Commonwealth pier is 1,200 feet long and 400 feet wide. It is surrounded on three sides by water 40 feet in depth, which is amply sufficient for the largest vessels. It is also well equipped for the handling of passenger traffic. On account of these superior advantages, and looking to the future development of its business, the White Star line, which had formerly used the Hoosac dock, by con-

tract dated October 30, 1913, secured docking and other port facilities at Commonwealth pier. The port directors by an earlier contract had already agreed to furnish docking facilities for a line of passenger steamers to be operated between Boston and Hamburg, Germany. In both of these contracts, the application of the Boston rate to the traffic is named as a consideration. All parties admit the superiority of Commonwealth pier, which is characterized by defendant's counsel as "perhaps the most splendid pier in the world." Complainant avers, however, that as many of the vessels now using Commonwealth pier could be accommodated at the National dock, the former is in effect a competitor of the latter with respect to a large volume of traffic; that the service and the charge for the transportation of freight between its dock and defendant's rails are less than those for transportation between Commonwealth pier and defendant's rails; from which it contends that the defendant violates the law in absorbing the charges of connecting lines in the one case and not in the other. In support of this contention complainant cites numerous authorities but points particularly to our report in *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115, in which we said, p. 120, that—

The test of the discrimination is the ability of one of the carriers participating in the two through routes from the two points of origin to the same point of destination to put an end to the discrimination by its own act, also to the decision of the Supreme Court in *Union Pacific R. R. Co. v. Updike*, 222 U. S., 215, in which it was held that a railroad company making an allowance to elevators on its own line for unloading grain must make the same allowance to elevators on connecting lines at the same point for a similar service; to our decision in *Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 620, where we held that there was undue preference in making an allowance to one industrial road while refusing a similar allowance to another industrial road serving a competing industry; and to our decision in *Manufacturers & Merchants Assn. v. A. & A. R. R. Co.*, 24 I. C. C., 331, holding that the practice of defendants in refusing to absorb bridge tolls on certain traffic at the Louisville-New Albany crossing, while absorbing the bridge tolls on similar traffic at certain other Ohio River crossings, was unduly prejudicial. The defendant, as before stated, does not admit undue discrimination, but has endeavored to discontinue its absorptions to and from Commonwealth pier. The state, as intervener, on the other hand, denies that the present practice is essentially discriminatory, placing its contention upon the ground that the Boston & Maine in absorbing the charges to and from Commonwealth pier in effect made that pier its own terminal; that the carrier has a right to prefer its terminal in its rates and charges; and that the Commonwealth

pier is not in the ordinary sense a competitor of the complainant's pier, but is a public utility, maintained and operated primarily for the benefit of the public, although deriving small incidental revenues from wharfage and the handling of freight and passengers. It adopted the scale of rates and charges already in use at the railroad piers, under which its operations for the first year resulted in a loss of \$340,000.

The considerations which moved the carriers to enter into the contract with the state are not shown of record. It was signed in behalf of the railroads by Charles S. Mellen, who was at that time president of both the New Haven and the Boston & Maine, the latter road being then controlled by the former through ownership of a majority of stock. It may be presumed that the interests of the two roads were considered by their officials to be in large measure identical. Commonwealth pier was, in every practical aspect, an additional terminal facility of the New Haven, a facility of great value that might reasonably be expected to increase the traffic and revenues of the railroads connecting therewith. The supplementary report of the directors of the port of Boston, dated March 31, 1915, says:

Pier No. 5, which has cost the state more than \$4,000,000 in money, and with added interest is a total charge of about \$4,450,000, is in fact an addition to the terminal facilities of the New Haven Railroad.

That the participation in these benefits by the Boston & Maine was considered desirable by its management is a natural supposition. The provision of facilities equal to those thus offered by the state would have been an expensive undertaking for the carriers. Under such circumstances a railway company might conceivably be justified in abandoning entirely its own docks and in employing exclusively the better terminal facilities offered elsewhere. The theory of the intervener apparently is that the act of the defendant in preferring Commonwealth pier was no more discriminatory than is the act of any railroad in extending its line to certain points in preference to others. If, having in view the possible benefits to be derived, the Boston & Maine had secured the right of way and had constructed a line to the pier, no one would have questioned its right to apply the Boston rates to such traffic as it might thereby secure, without incurring an obligation to absorb charges to or from other piers. Is the aspect different if, instead of doing either of these things, the carrier elects to pay the switching and other transfer charges of the connecting lines?

It is true that if the line to Commonwealth pier were operated by the Boston & Maine there would be nothing unusual in the application of the same rates to the pier traffic as are applied to traffic terminating at the Hoosac or Mystic docks. We have many times approved group rates, where they do not result in undue preference.

Largely on the score of practicability, their application at different points on the same line within terminal districts is almost universal. But here we have the extension of the group to include a point of delivery on one connecting line, coupled with the refusal to include points on other lines similarly situated. There is no showing of competition to justify this discrimination; the traffic is local to the Boston & Maine and no traffic advantage over other lines can be gained by preferring either pier. Under these circumstances, to say that one and not the other may be considered the carrier's terminal would invite the fictitious creation of terminals as an expedient to secure favorable rates. The intervener cites *United States v. B. & O. R. R. Co.*, 231 U. S., 274, as an analogous case, but there the industry furnishing the facility performed the rail carrier's terminal services, its station was within the limits to which the New York rates applied, and its lighterage service in behalf of the rail carrier was held to be a portion of the rail carrier's service, which therefore extended to the facility in question. It will not be contended that the service of the Boston & Maine begins or ends at Commonwealth pier, which is as clearly on a connecting line as is the complainant's dock. There is no doubt of the public character of the enterprise; nevertheless the state pier is in effect a competitor of similar facilities of private ownership, and, under the law, is entitled to no preferential treatment from carriers. Much of the traffic which passes over Commonwealth pier could be accommodated at complainant's dock, and the record indicates that the transfer of freight to and from the latter involves less service and expense than when the former is used. It is our conclusion that the present practice of the defendant in absorbing connecting line charges upon interstate traffic to and from Commonwealth pier while refusing to absorb connecting line charges on similar traffic to and from complainant's dock is unduly prejudicial to the complainant and to shippers and receivers of freight moving in interstate or foreign commerce using its docks, from which undue prejudice the defendant, by an appropriate order, will be required to cease and desist.

Any increase in rates resulting from such discontinuance must be justified. *Rates on Hay to Chicago*, 34 I. C. C., 150. So far as the shipping public is concerned the effect of a switching absorption is to establish a joint rate; the cancellation of an absorption is the withdrawal of a joint rate, leaving effective the higher aggregate of intermediate rates. *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 304. In such a case both the holding out and the withdrawal of the lower through rate are entirely the act of one of the carriers, which must therefore be prepared to justify the increase caused by the withdrawal. As we have seen, when the absorptions to and from Commonwealth pier were inaugurated the

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interests of the Boston & Maine and the New Haven, under conditions then existing, were doubtless considered by the contracting railway officials to be identical. Owing to governmental action that condition no longer exists. On July 23, 1914, a petition was filed in the United States district court for the southern district of New York, charging the New Haven with monopolizing the transportation facilities of New England. As a result of negotiations between the Department of Justice and the new management of the New Haven, entered into at the latter's request, a plan of voluntary dissolution was agreed upon and incorporated in a decree of that court, entered October 17, 1914, providing, among other things, that the New Haven relinquish its control of the Boston & Maine. The resulting dissolution of interests has restored the former status of the respondent as an independent carrier. It now appears before us strenuously seeking to withdraw from the arrangement with the state, claiming that the absorptions result in unreasonably low rates. Its counsel declares that the benefits of the contract accrue principally, if not entirely, to the New Haven, but that those benefits are paid for wholly by the Boston & Maine.

In support of its contention that its present rates on Commonwealth pier traffic are unreasonably low, the respondent filed statements showing revenues from traffic passing over the pier during the period from May 14, 1913, to April 30, 1915. Many of the rates of the Boston & Maine were increased during that period, but the computation of revenues for the entire period is based upon the rates in effect July 1, 1915. The statements are further limited to such traffic as would be affected by the proposed withdrawal of absorptions. Following is a summary of the exhibits:

Import and export freight via Commonwealth pier, on which absorptions of switching were made by Boston & Maine Railroad, May 14, 1913, to April 30, 1915, computed on basis of rates in effect July 1, 1915.

	Weight.	B. & M. gross revenue.	Absorptions.		
			Switching.	Wharfage.	Total.
	<i>Pounds.</i>				
Import.....	77,414,762	\$50,288.94	\$23,392.65	\$3,096.71	\$26,489.36
Export.....	37,224,863	30,407.23	11,447.60	1,488.96	12,936.56
Total.....	114,639,615	80,696.17	34,840.25	4,585.67	39,425.92

	B. & M. net revenue	Tons.	Ton-miles.	B. & M. revenue per ton-mile.
				<i>Cents.</i>
Import.....	\$23,799.58	38,707.38	2,386,657	0.997
Export.....	17,470.67	18,612.42	3,037,562	.575
Total.....	41,270.25	57,319.80	5,424,219	.761

The average ton-mile revenue of the entire freight traffic of the Boston & Maine for the year ending June 30, 1915, as shown by the carrier's annual report to the Commission, was 1.119 cents. The earnings on the traffic involved in this proceeding were thus 32 per cent below the average. It must also be considered that the Commonwealth pier traffic is largely local, on which the earnings should be relatively high. It includes a great variety of commodities, moving both in carloads and less than carloads, but the proportion of carload traffic does not appear. The average haul of the Commonwealth pier freight here involved is 94.6 miles, while that of all Boston & Maine freight is about 106 miles. The detail of the respondent's exhibits shows that on the traffic to and from certain stations the absorptions were greater than the revenue. For example, the gross revenue of the Boston & Maine on shipments of 191,055 pounds of rags from Chelsea, Mass., for export was \$57.32. The absorptions for switching and wharfage amounted to \$59.16, leaving a loss of \$1.84, not counting the cost of the service to the Boston & Maine. The absorptions on the traffic as a whole amount to about 49 per cent of the revenue. Protestants, however, call attention to the fact that the absorption payments include compensation for the loading or unloading of the freight, thereby reducing the cost of the service via Commonwealth pier as compared with that via the Boston & Maine piers. Making due allowance for this factor, we conclude that the respondent is justified in seeking to increase its net revenues for the transportation of freight imported or exported via Commonwealth pier and will next inquire as to the reasonableness of the rates which would become effective upon cancellation of the absorptions.

Discontinuance of the present absorptions would not result in the restoration of rates formerly in force, for the reason that the local rates of the Boston & Maine have been increased since the absorptions commenced. The former rates were acknowledged to be too low to permit pier absorptions at Boston. The report of the port directors for 1914 says:

At the new Commonwealth pier 5 the directors of the port of Boston have succeeded in arranging with the railroads so that, with but one minor exception, the rates from the pier are as low to all points in the United States and Canada as the rates from the most favorable railroad pier. The result has been obtained through the contract of July 1, 1912, for the canceling of the lease of the Commonwealth pier to the Old Colony Railroad in connection with which the Boston & Maine and New Haven railroads each agree to make the same rates apply to the Commonwealth's terminal as to their own terminal, absorbing all intermediate charges; and the Boston & Albany has voluntarily absorbed the switching charges for all points north of Palmer and west of Chatham.

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It is hoped and believed that this will result eventually in a similar arrangement for the railroad-owned piers. The difficulty lies in the fact that the railroads in many cases have established extremely low rates between their piers and local New England territory—too low to permit the absorption of the charge which the other railroad is entitled to make for switching, loading, or unloading and the use of its wharf. It would be a desirable solution of the difficulty if all export and import rates could be equalized and put on such a basis that the rate would include delivery to all piers in the harbor.

Following, and as a result of, our investigation in the matter of rates, classifications, regulations, and practices of carriers operating in New England, as reported in *The New England Investigation*, 27 I. C. C., 560, a conference was held of the railroad commissions of Massachusetts, Vermont, New Hampshire, and Maine, which found that the revenues of the Boston & Maine were too low and recommended a general increase and readjustment of its local rates upon a basis worked out under the authority and direction of the New Hampshire commission. The present local rates of the Boston & Maine are substantially those recommended. Protestants filed exhibits showing the increases in rates between Boston and manufacturing points in New England. The following examples are illustrative of rates in effect before and after the advances of 1914:

Between Boston and—	Miles.	Year.	Classes.					
			1	2	3	4	5	6
			Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Manchester, N. H.	52	1913	15.0	12.0	12.0	9.0	9.0	9.0
		1915	21.0	18.0	15.0	12.0	8.0	7.0
Salem, Mass.	16	1913	7.0	6.0	6.0	5.0	5.0	5.0
		1915	11.0	9.0	8.0	6.0	4.0	4.0
Lowell and Lawrence, Mass.	26	1913	10.0	9.0	9.0	8.0	8.0	7.0
		1915	15.0	13.0	11.0	8.0	6.0	5.0

Between Boston and—	Miles.	Year.	Commodities.					
			Import cotton and export cotton waste.	Import wool in bales, car-loads.	Manu- factures of cotton, export.	Manu- factures of wool, export.	Boots and shoes, export.	Dry hides, car-loads, import.
			Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Manchester, N. H.	52	1913	8.0	8.0	9.0	9.0	12.0	.....
		1915	8.0	12.0	15.0	18.0	15.0	.....
Salem, Mass.	16	1913	4.0	.....	5.0	.....	6.0	5.0
		1915	4.0	.....	8.0	.....	8.0	6.0
Lowell and Lawrence, Mass.	26	1913	5.0	6.25	7.25	7.25	.....	.....
		1915	6.0	8.0	11.0	13.0	.....	.....

It should not be inferred that these increases are indicative of those in the freight rates of the Boston & Maine as a whole. The present Boston & Maine system includes several formerly independent short lines of road running out of Boston, on which the rates

were very low. These rates were continued after the consolidation of the lines and were in special need of readjustment. The average freight earning per ton-mile on the Boston & Maine system for the year ending June 30, 1913, as shown by the annual report to this Commission, was 1.054 cents; for the year ending June 30, 1915, 1.119 cents, an increase of about 6 per cent.

There is some evidence in the record to the effect that the absorptions to and from Commonwealth pier were taken into consideration in fixing the present Boston rates. It is difficult to believe, however, that the framers of these tariffs had in contemplation the movement of the entire ocean traffic of the respondent via Commonwealth pier, or believed that as a whole the rates recommended for application on the Boston & Maine could stand such deductions. The rail connection then and now in use is not a practicable route for the movement of a large volume of traffic. The supplementary report of the port directors to the general court, dated March 31, 1915, says:

There is no connection between the Boston & Albany and the New Haven except through the south terminal, or between the Boston & Maine and the New Haven except over the inadequate Union Freight line or the long detour by Lowell, Framingham, and Taunton or Attleboro, and vice versa. Switching freight cars by the Union Freight Railroad, owned by the New Haven, is a process so clumsy and tedious in character that this road is practically nothing more than a supply road for the merchants doing business along Atlantic avenue, and at that is so costly and inefficient that much of the business is done preferably by teaming from the rail terminals.

The record contains much evidence of similar tendency. It appears that switching on the Union Freight is restricted by city ordinance to certain hours, and that the service involves complicated movement through the passenger terminals of both the Boston & Maine and the New Haven. The traffic of the Boston & Maine by way of the pier since the absorptions commenced has not been large, but this is in part due to the interruption of European trade by the war. It seems clear that if all of its ocean-going traffic should pass over Commonwealth pier, subject to these absorptions, the rates would be inadequate, and this is admitted by protestants' principal witness. On the other hand, the elimination of the absorptions here proposed will add a relatively small amount to the freight revenues of the road, less than one-tenth of 1 per cent, based on the traffic of the past two years.

Protestants contend that the discontinuance of the absorptions will result in unreasonable and excessive rates on the traffic affected. As we have seen, the rates which would become effective are made up of the regular Boston rate of the Boston & Maine and the switching charge of 60 cents per ton, which also includes the loading or unloading at the pier. Upon analysis the principal attack is directed

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against the use of the full Boston rate as a factor in the Commonwealth pier rates, and is based upon the ground that the Boston rate covers the service of loading or unloading at dock; its use as a factor in the through rate to or from Commonwealth pier would therefore in effect include double compensation for such service. Protestants' witness estimated this expense at perhaps 15 to 25 cents per ton. Protestants also questioned the reasonableness of the charges of the Union Freight and New Haven roads, but the opinions expressed were not based upon adequate investigation or analysis, and the evidence is insufficient to overcome the presumption of reasonableness which attaches to these rates through their long use. Based upon cost of service alone, the record indicates that the combination rates between Commonwealth pier and points on the Boston & Maine are relatively somewhat higher than the rates between the same points and the Hoosac or Mystic docks. It does not follow that they are excessive. The port directors, as a result of a study of port conditions, estimate that the railroads serving Boston sustain an annual loss of \$1,383,140 on their import and export business, and state their opinion that these losses are an important factor in the unsatisfactory financial condition of the Boston & Maine, which handles approximately 80 per cent of the import and export trade of the port. It should be noted that the import and export rates here in question apply also on domestic freight.

In further support of the charge of unreasonableness of the Boston rates as applied to import and export traffic by way of Commonwealth pier, protestants point out the fact that the earnings of respondent on freight moving to or from long distance territory and on its coastwise traffic are much lower than on the traffic involved in this case. The rates thus used for comparison are the result of competition and can not properly be used as the measure of rates on the short distance import and export traffic. The coastwise steamer lines either own or rent docks for their use and do not use Commonwealth pier. They assume the cost of transfer between their docks and the railroads, hence the question of railroad switching absorptions on coastwise traffic is not involved. Other comparisons are made with rates for similar distances to or from New York and Philadelphia, tending to show that the latter, while no higher than the Boston rates, include the service of lighterage. In the absence of a showing that these rates are compensatory to the carriers, or that the circumstances, including the volume of the traffic and other transportation conditions, as well as the needs of revenue, are similar, we can not attach great weight to such comparisons. Upon the whole record we conclude and find that the respondent has justified its proposed cancellation of provisions for the absorption of connecting line charges and wharfage on import and export freight moving by

way of Commonwealth pier, as contained in the tariffs under suspension.

In reaching this decision we have found it necessary to disregard certain reasons, strongly urged by the protestants, for a continuance of the present practices. They point out that the Hoosac and Mystic docks can not accommodate the large vessels now coming into use in the ocean trade, and claim that without the use of Commonwealth pier the terminal facilities of the Boston & Maine will be inadequate. It is shown, however, that many vessels regularly use the Hoosac and Mystic docks; that they have accommodated the great bulk of the respondent's import and export business up to the present time; and that they could not be abandoned but must be maintained whether it seek business by way of Commonwealth pier or not. It is also urged that the proposed action of respondent will have a tendency to drive business to other ports; but such a result, however probable, must be disregarded in forming an opinion as to the propriety of the proposed tariffs. It is further claimed that in undertaking their great expenditures on Commonwealth pier in behalf of the state, the port directors relied upon their contract with the carriers for the application of Boston rates; and in their subsequent contracts with steamship lines the state became the guarantor of such rates. Nothing that is here said should be understood as an expression of opinion regarding the alleged breach of faith on the part of the respondent in thus seeking to withdraw from the arrangement entered into under its former management. However desirable it may be, either from the standpoint of public duty or in the interest of their individual prosperity, that the New England carriers cooperate with the state of Massachusetts in the manner requested, in its effort to develop the business of the port of Boston, should they decline to do so their action is not subject to review by us under any provision of the act.

Our order of suspension must accordingly be vacated.

Counsel for the Boston & Maine upon argument called our attention to the fact that should the suspended tariffs become immediately effective collection of rates thereunder will be in violation of the injunction issued by the supreme judicial court of Massachusetts, and asked that the effective date of the tariffs be deferred under our order until further proceedings may be had before that court. We can not anticipate the action of the court nor have we any warrant in law for permitting the delay requested.

HARLAN, *Commissioner*, concurring:

The approval herein by the Commission of the discontinuance by the carriers of their absorption of the switching charges to and from the Commonwealth pier, in which approval I concur, removes the discrimination alleged by the National Dock & Storage Warehouse Company.

HALL, *Commissioner*, concurring:

I concur in the finding that respondent has justified its proposed cancellation of existing tariff provisions for the absorption of connecting line charges and wharfage, and in the vacation of our order of suspension. This will have the effect of removing any undue prejudice resulting from the maintenance of that absorption practice on traffic to or from the Commonwealth pier and not on traffic to or from the pier of complainant. But I am unable to assent to the conclusion that this practice is unduly prejudicial to the complainant, which is neither shipper nor consignee, does not pay the charges which the Boston & Maine fails to absorb, and appears from the record, as reflected in the report, to be a stranger to the transportation service for which the charges are made. I am authorized by COMMISSIONER CLEMENTS to say that he concurs in the views here expressed.

FOURTH SECTION APPLICATION No. 10167.
BITUMINOUS COAL FROM POINTS ON THE PENNSYLVANIA RAILROAD AND ITS CONNECTIONS.

Submitted January 10, 1916. Decided April 11, 1916.

Application for authority to establish rates on bituminous and cannel coal from points on the Pennsylvania Railroad and its connections to water competitive points on the Maryland-Delaware peninsula lower than rates contemporaneously applicable on like traffic to intermediate points denied.

Frederic L. Ballard for petitioners.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

By Fourth Section Application No. 10167 the Pennsylvania Railroad Company seeks authority to create and increase discriminations against intermediate points, in violation of the long-and-short-haul provisions of section 4 of the act, by reducing the rates on bituminous and cannel coal in carloads from mines on its line and on the lines of its connections in the Clearfield, Snow Shoe, Westmoreland, Pa., and Cumberland, Md., and other coal-producing districts in the same territory, to water competitive points on the Maryland-Delaware peninsula, without observing the long-and-short-haul provision of the fourth section of the act to regulate commerce.

There are various mines on the Pennsylvania Railroad and its connections in the states of Pennsylvania and Maryland which produce bituminous coal, and some of the points at which this coal is consumed are located on the peninsula which lies between Chesapeake Bay and the Atlantic Ocean. These points of consumption are served by the Pennsylvania Railroad in connection with its affiliated lines, the Philadelphia, Baltimore & Washington Railroad; Baltimore, Chesapeake & Atlantic Railway; Maryland, Delaware & Virginia Railway; and New York, Philadelphia & Norfolk Railroad.

There are 15 districts or groups of mines from which the rates here in question apply, but it is only necessary to give consideration to the rates from the Clearfield, or central Pennsylvania district, as the rates from the other mines or fields are the same as, or are made with relation to, the rates from this district.

Below is a statement of the rates, per long ton, which it is sought to establish from the Clearfield district, the destinations to which such rates would apply, the delivering line, and the distances from

the Clearfield district, figured by using the distance from Gallitzin, Pa., which is at the summit of the Allegheny Mountains, on the main line, and adding thereto 25 miles, that being the average distance of the mines in the Clearfield district from Gallitzin:

To points on—	Rate.	Miles.
Philadelphia, Baltimore & Washington R. R.:		
Centerville, Md.	\$2. 25	317
Easton, Md.	2. 25	334
Millford, Del.	2. 25	326
Franklin City, Va.	2. 25	395
Cambridge, Md.	2. 25	370
Rehoboth, Del.	2. 25	361
Federalburg, Md.	2. 25	347
Laurel, Del.	2. 25	348
Baltimore, Chesapeake & Atlantic Ry.:		
Chesapeake, Md.	2. 25	413
Easton, Md.	2. 25	396
Fulton, Md.	2. 25	357
Salisbury, Md.	2. 25	356
Ocean City, Md.	2. 25	386
St. Michael's, Md.	2. 25	408
Vienna, Md.	2. 25	371
Maryland, Delaware & Virginia Ry.:		
Love Point, Md.	2. 25	373
Queenstown, Md.	2. 25	359
Centerville, Md.	2. 25	365
Denton, Md.	2. 25	339
Milton, Del.	2. 25	336
New York, Philadelphia & Norfolk R. R.:		
Salisbury, Md.	2. 25	356
Crisfield, Md.	2. 25	388

The above-named points of destination are located either on Delaware Bay, Chesapeake Bay, the Atlantic Ocean, or waters tributary thereto, and therefore traffic may move to the said points by rail and water as well as via all rail. The present rates applicable on coal moving all rail are substantially higher than those on the water-borne coal and are not exceeded at the intermediate inland points, except in one or two instances. The testimony at the hearing of this case developed that out of the 35,000 or 40,000 tons of coal moving annually to the water competitive points approximately 11,000 tons, or less than one-third, moves all rail, the balance being carried by rail to Philadelphia, Baltimore, Wilmington, Norfolk, Hampton Roads, and other Atlantic ports, thence by barge or other vessels to destination. In order to secure for their lines a larger share of this tonnage applicants desire to reduce their all-rail rates to points accessible by boat by amounts ranging from 20 to 85 cents per ton. The proposed rates would still be slightly higher than the rail-and-water rates, but on account of the greater convenience and dispatch of the all-rail route it is considered that a substantial amount of the traffic will be attracted to the all-rail lines. The all-rail route is via the Pennsylvania Railroad and Philadelphia, Baltimore & Washington Railroad to Perryville, Md., and Porter, Del., thence via the other rail carriers named above, all of which are owned or controlled by the Pennsylvania Railroad.

The departures from the rule of the fourth section resulting from the adjustment sought to be established would occur at points on the peninsula south of Clayton, Del., and representative examples are shown below:

From Clearfield to—	Dis- tance.	Rate per long ton.	Revenue per long ton-mile.
P., B. & W. R. R.:	<i>Miles.</i>		<i>Mills.</i>
Dover, Del.	301	\$2.35	7.53
Wyoming, Del.	304	2.45	8.07
Bridgeville, Del.	330	2.55	7.73
Georgetown, Del.	341	2.65	7.47
Snow Hill, Md.	353	2.80	7.81
Ridgeley, Md.	318	2.55	8.02
Hurlock, Md.	353	2.80	7.95
B., C. & A. Ry.:			
Bethlehem, Md.	301	2.80	7.16
Berlin, Md.	379	2.80	7.33
Whaleville, Md.	372	2.80	7.33
M. D. & V. Ry.: Greenwood, Del.	325	2.55	7.94
N. Y., P. & N. R. R.: Princess Anne, Md.	369	3.10	8.39

The average distance from the Clearfield district to the points named above is 346 miles and the revenue varies from 6.3 to 7.5 mills per net ton-mile, or 7.16 to 8.39 mills per long ton-mile.

In justification of the relief prayed the applicants urge that the rates proposed are necessary to meet the competition created by the water lines serving the destinations named; that they are depressed rates; and that the higher rates which they desire to continue to intermediate points are reasonable and compare favorably with rates for equal distances between points in the same general territory, some of which have been approved by this Commission.

It is shown by the evidence that the territory of destination is sparsely settled, is devoted mainly to truck farming and consumes much less coal and draws less of other traffic than better developed regions, and that the cost of operation of the peninsular lines is greater than that of lines serving a more thickly populated and manufacturing section, and it is asserted that reductions in the rates to the intermediate points to the level of the proposed rates to the water competitive points would result in a loss of revenue of approximately \$20,000 per annum. Applicants introduced exhibits purporting to show that the proposed rates to intermediate points compare favorably with other coal rates of the Pennsylvania Railroad to the Harrisburg, York-Lancaster, and Philadelphia-Baltimore groups, but these exhibits do not appear to sustain this contention. The rates offered in comparison yield approximately the same per ton-mile earnings for distances of 215 miles and less as the present rates to the intermediate points herein involved, but for an average distance of 255 miles the rate shown is \$1.60 and the yield per net ton-mile 5.6 mills, or 6.27 mills per long ton-mile. As shown above, the average distance to the

intermediate points involved herein is nearly 350 miles, and the present rates yield from 6.3 to 7.5 mills per net ton-mile. The average distance to the water competitive points is approximately 363 miles. For this distance the rate of \$2.25 which it is desired to establish to the majority of the water competitive points is equivalent to 6.2 mills per long ton-mile. The statistical report of the Commission for the year 1914 shows that the revenue on bituminous coal for the entire United States was 4.57 mills per net ton-mile, and for the same year the per net ton-mile revenue for the eastern district of the United States was 4.15 mills. The report also shows that the per ton-mile earnings on all traffic on the Pennsylvania Railroad for the year 1914 was 5.78 mills per net ton, or 6.47 mills per long ton.

In the course of this investigation it developed that the rate carried by applicants to Cape May, N. J., a distance of 365 miles, from the Clearfield district is \$1.95 per ton, and this rate is not exceeded at intermediate points. The present rate to Pope's Creek, Md., a point located in the southern portion of the peninsula between the Potomac River and Chesapeake Bay, 321 miles distant from the Clearfield region, is \$2.25 per ton, and that rate also is not exceeded at intermediate points. We believe that the rates to these points furnish a better basis for comparison than do those submitted at the hearing.

Upon consideration of all the facts, conditions, and circumstances of record surrounding the traffic to points herein involved, and of all other facts of record, we are of opinion that it has not been shown that the rates to water competitive points on the Maryland-Delaware peninsula may properly be exceeded at intermediate points. The application for relief will be denied.

An order will be entered in conformity with these views.

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PENINSULAR & OCCIDENTAL STEAMSHIP COMPANY.

No. 6914.

APPLICATIONS OF THE FLORIDA EAST COAST RAILWAY COMPANY AND ATLANTIC COAST LINE RAILROAD COMPANY UNDER SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY SECTION 11 OF THE PANAMA CANAL ACT, IN CONNECTION WITH THE OPERATION OF THE PENINSULAR & OCCIDENTAL STEAMSHIP COMPANY.

Decided April 11, 1916.

Upon further consideration of all the facts of record, and in view of the revisions in the rates and the divisions thereof made by petitioners and the steamship company; *Held*, That the continued ownership and operation of the steamship company by petitioners as at present conducted will neither exclude, prevent, nor reduce competition on the route by water under consideration, and that the applications should be granted, subject to such further order or orders as may hereafter be entered by the Commission.

Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Chairman*:

In the original report in this case, 37 I. C. C., 432, involving the applications of the Florida East Coast Railway Company and the Atlantic Coast Line Railroad Company, under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, for authority to continue their joint ownership of, and to operate beyond July 1, 1914, the Peninsular & Occidental Steamship Company, hereinafter referred to as the steamship company, the Commission found the operation of the steamship company as a whole to be in the interest of the public and of advantage to the convenience and commerce of the people. No order, however, was entered, because of certain phases of the steamship company's operations which did not appear to be in harmony with the spirit of the law, and it was directed that the case be held open for a period of 60 days to afford petitioners an opportunity to revise their rates and the divisions thereof in conformity with the views of the Commission. The present report relates to the action taken by petitioners and the steamship company to remove the ground of criticism referred to above.

On February 22, 1916, the manager of the steamship company addressed a letter to counsel for petitioners describing in detail the changes in rates and the divisions thereof determined upon to meet the views of the Commission as expressed in the original report. The statements of the manager of the steamship company hereinafter quoted are taken from a copy of this letter filed with the Commission.

With regard to the so-called Port Tampa route the Commission in its original report said, at page 439:

* * * The distance between Jacksonville and Havana over the Coast Line via Port Tampa is 609 miles, while the distance over the East Coast via Key West between the same points is 627 miles. The former route comprises a rail haul of 249 miles and a water haul of 360 miles; the latter route a rail haul of 522 miles and a water haul of 105 miles. For this reason under normal conditions the cost of operation, and therefore the rates via the Port Tampa route, should be lower than, or at least as low as, the rates via the Key West route, yet the rates via the Port Tampa route are in many instances higher than the rates via the Key West route. * * *

Referring to this relationship of the rates over the two routes, the manager of the steamship company states:

* * * To remedy this condition we have adopted a plan of establishing through rates from all territories to Key West, Fla., when for export to Havana. The through rate to Key West will be the same on business routed either via the Florida East Coast or the Coast Line to Port Tampa. This also applies to rates to and from Jacksonville proper, which gives the Port Tampa route an equal chance on the Havana business.

An examination of the tariffs filed with the Commission covering the changes outlined above discloses a substantial compliance with the recommendations contained in the original report herein relative to the rate adjustments involved.

The manager of the steamship company also gives the percentages to be observed in calculating the divisions accruing to the various carriers participating in the revised rates, and states:

* * * In dividing these rates it was decided to allow the Peninsular & Occidental Steamship Company the same proportions between Key West and Havana via Port Tampa as now accrue on business moving via the Florida East Coast Railway, Key West, and the Peninsular & Occidental Steamship Company. * * *

Discussing the paucity of through traffic moving over the Seaboard Air Line to Tampa, thence over the Coast Line and steamship company to Key West and Havana, the Commission said, at page 439 of its report:

The record discloses, however, that the divisions accruing to the Seaboard on traffic moving over this route are not calculated to induce the movement of through freight via Port Tampa. The Seaboard's haul from Jacksonville to Tampa is 211 miles, and the division of the through rate which it receives

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ranges from 18 to 32 per cent. The Coast Line's haul from Tampa to Port Tampa is about 9 miles, and the water haul of the steamship company to Cuba about 460 miles, for which service these companies jointly receive from 68 to 82 per cent of the through rate.

In this connection the manager of the steamship company advises:

It was decided that on traffic moving to Havana via the Seaboard Air Line to Tampa, Atlantic Coast Line Railroad to Port Tampa, thence via the Peninsular & Occidental Steamship Company, the Peninsular & Occidental Steamship Company will receive the same proportion as accrues on business handled direct by the Coast Line via Port Tampa, the proportions accruing from Jacksonville to Port Tampa to be subdivided as follows: Seaboard Air Line Railway, Jacksonville to Tampa, 75 per cent; Atlantic Coast Line Railroad, Tampa to Port Tampa, 25 per cent.

This new basis of divisions appears more equitable than the basis formerly in effect.

It is to be observed that our conclusions with respect to divisions are based on the percentage bases enumerated in the letter mentioned above, which were accepted in lieu of the actual divisions. The Commission will require that it be immediately advised of any changes in the percentages now on file.

Upon further consideration of all the facts of record, and in view of the revisions in the rates and the divisions thereof made by petitioners and the steamship company, we are of the opinion and find that the continued ownership and operation of the steamship company by petitioners as at present conducted will neither exclude, prevent, nor reduce competition on the route by water under consideration, and that the applications should be granted, subject to such further order or orders as may hereafter be entered by the Commission.

An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 693.
CENTRAL FREIGHT ASSOCIATION TERRITORY FRESH
MEAT AND PACKING-HOUSE PRODUCT RATES.

Submitted February 23, 1916. Decided April 11, 1916.

1. By the suspended tariff schedules respondents proposed certain increased rates for the transportation of fresh meats, packing-house products packed, and packing-house products loose, between points in central freight association territory. Subsequent to the hearing and in view of the Commission's decision in *Eastern Live Stock Case*, 36 I. C. C., 675, respondents abandoned their claims to have justified the rates under suspension and asked that rates not published in the suspended schedules be approved. In the meantime the Commission extended a pending general investigation so as to include official and southern classification territories. Upon all the facts, *Held*, That the suspended schedules should be canceled, but without prejudice to the filing of new tariffs naming rates on packing-house products packed and packing-house products loose.
2. Proposed increased carload minima applicable to the transportation of fresh meat and packing-house products loose, between points in central freight association territory, found to have been justified.

Ernest S. Ballard, William W. Collin, jr., and T. H. Burgess for respondents.

H. K. Crafts, A. R. Union, Charles J. Faulkner, jr., Walter E. McCornack, A. W. McLaren, E. W. Skipworth, Luther M. Walter, John S. Burchmore, R. D. Rynder, William E. Lamb, Harry Eugene Kelly, Thomas Creigh, Edward E. Gates, and D. R. Brown for various protestants.

REPORT OF THE COMMISSION.

MEYER, Chairman:

By the suspended tariffs respondents proposed increased rates applicable to the transportation of fresh meat, packing-house products packed, and packing-house products loose, between points in central freight association territory, and increased carload minima applicable to fresh meat and packing-house products loose for the same movements. The rates thus proposed for fresh meat are 144 per cent, for packing-house products loose 115 per cent, and for packing-house products packed 100 per cent of the mileage scale of live-stock rates, which was under consideration and found not justified in *Eastern Live Stock Case*, 36 I. C. C., 675, 677.

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In view of our decision in that case, which was announced subsequent to the taking of this record, respondents concede that they have not justified the rates here under suspension and that the tariffs should be canceled. We are urged to find that rates not published in the suspended schedules have been justified by the evidence before us. Thus it is now proposed that rates on fresh meat be made 144 per cent of the live-stock scale found reasonable in *Eastern Live Stock Case, supra*; that rates on packing-house products loose should take the fourth-class basis and rates on packing-house products packed the fifth-class basis.

Some of the protestants insist that these rates as now proposed were not in issue at the hearing and therefore have not been the subject of adequate investigation. Since they are lower than the rates in the suspended schedules, the Commission unquestionably has power to find that they have been justified if the facts of record so warrant. It is also within the power of the Commission to withhold approval of these rates if necessary either to secure a more complete disclosure of facts or to avoid the denial of substantial justice to respondents as well as protestants.

Respondents here urge that rates on fresh meat should be 144 per cent of rates on live stock upon the ground, among others, that this relationship was approved by the Commission in *Eastern Live Stock Case, supra*. In this they are under a misapprehension, for in that case the question of relationship, although sought to be put in issue by some of the protestants, was not considered. At page 707, the Commission said:

In the instant case protestants representing packing interests located west of the Mississippi River, including interior Iowa points, have asked the Commission to make substantial readjustments in the relation between rates on live stock, fresh meat, and packing-house products. For this the present record affords no adequate basis, but the investigation which has been instituted by the Commission will afford an opportunity for the full presentation of facts by all interests. It is not unlikely that the conclusions reached as a result of that investigation will have a bearing upon the rates and relationships here involved, and in that event the rates here approved may subsequently require readjustment.

The scope of the investigation there referred to has been extended so as to include official and southern classification territories. *Live Stock and Products Case, Docket 8436, et al.* The question as to the relation of rates on fresh meat to rates on live stock is in issue in that investigation and should be there determined.

Upon movements from central freight association territory to trunk line territory packing-house products packed take the fifth-class rates and packing-house products loose, fourth-class rates. This is also true of movements within a substantial part of central freight

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association territory. Some of the protestants urge that rates on packing-house products loose should not exceed rates on packing-house products packed, while others take this position only as to some of the articles contained in the list which we have described as packing-house products loose.¹ The same rates apply on packing-house products, packed and loose, in other territories, see *Eastern Live Stock Case, supra*, and from central freight association territory to the Virginia cities as an exception to the general adjustment in official classification territory.

The rates now sought to be justified on packing-house products packed and packing-house products loose would therefore conform to the basis generally, although not uniformly, effective in official classification territory, while their relation would differ from that which exists in other territories. These differences are not here in issue, but are clearly within the scope of our general investigation.

The interior Iowa packers urge that the rates proposed in the suspended schedules, if permitted to become effective, would result in unjust discrimination against interior Iowa points and in undue preference to packers which ship from Missouri River points, such as Sioux City, Iowa, Omaha, Nebr., and Kansas City, Mo. The basis of this contention is the fact that the proportional rates applicable to transportation of fresh meat and packing-house products, packed and loose, from the Mississippi River to points in central freight association territory when the shipments originate at the Missouri River are not applicable to shipments which originate at interior Iowa points. The present adjustment of rates stated in cents per 100 pounds is this: The local rate on fresh meat from Omaha to the east bank Mississippi River crossings is 18.5 cents; to Chicago, 23.5 cents. From Chicago to Buffalo, N. Y., the rate is 28.4 cents, making the Chicago combination to that point 51.9 cents. The local rate from East St. Louis, Ill., to Buffalo is 33.6 cents, making the combination of local rates from Omaha via East St. Louis 52.1 cents. To equalize this gateway with Chicago respondents publish a proportional rate from East St. Louis of 33.4 cents. This proportional rate is made applicable from all east bank Mississippi River crossings upon shipments from the Missouri River for the purpose of equalizing those crossings with East St. Louis, but is not made applicable to shipments from

¹ The term packing-house products loose is used to designate articles frequently described as bulk meats. As defined in the brief of one of the protestants this term includes three classes of meats: First, boneless chucks, shank meats, neck meats, beef and pork trimmings, etc., salted; second, hog meats packed in ice or salt, or both, consisting of hams, shoulders, sides, and other hog meats in bulk, which partially cure in transit; third, bulk cured meats, consisting of dry, salted, smoked, and sweet pickled meats. This protestant suggested that bulk cured meats should take the same rates as packed cured meats, which under the designation packing-house products packed include all cured and manufactured meat products in packages.

interior Iowa points. Shipments originating at those points move east from the Mississippi River on a proportional rate which is the same as the local rate from East St. Louis. To Buffalo this rate, as stated, is 33.6 cents. The result is that the proportional rate applicable to shipments originating at interior Iowa points is 0.2 cent higher than the proportional rate applicable to shipments originating at Omaha.

The rates in the suspended schedules are made upon the same principle, but the difference between the proposed local rate from East St. Louis to Buffalo and the proposed proportional rate from that gateway which would equalize the Chicago combination on Omaha traffic is 2.5 cents. This would increase the spread between the rates applicable from east bank Mississippi River crossings on Omaha traffic and on interior Iowa traffic by 2.3 cents. In connection with the contention that this would be unjustly discriminatory, it should be noted that to the east bank Mississippi River crossings proportional rates apply on interior Iowa traffic, while local rates apply on Omaha traffic. The question whether the interior Iowa points are subject to undue prejudice must be determined by a consideration of the aggregate charges from point of origin to destination and not by a test of factors by which but a part of those charges are made. This proceeding does not embrace the rates from the Missouri River and from interior Iowa points to the Mississippi River, nor the through rates from those points to destination. The issue is one, therefore, which can not be determined here, but may properly be considered in the pending general investigation.

As to fresh meat, our order canceling the suspended tariffs will require the maintenance of the current rates as maxima during the pendency of our investigation, but not to exceed two years. As to packing-house products packed and packing-house products loose, the order of cancellation will be made without prejudice to the filing of new tariffs.

It is proposed to increase the carload minimum on fresh meat from 20,000 to 21,000 pounds and on packing-house products loose from 28,000 to 30,000 pounds. Some of the protestants do not oppose these proposed increased minima. They were approved in *Eastern Live Stock Case*, *supra*, page 706, and the evidence here confirms the judgment there expressed. We find that they have been justified.

An order will be entered accordingly.

38 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 711.

RATES ON IRON AND STEEL ARTICLES TO SPOKANE,
WASH., AND OTHER POINTS.

Submitted November 26, 1915. Decided April 11, 1916.

Proposed increased rates on sheet iron and steel, No. 12 and lighter, from eastern defined territories to Spokane, Wash., found to be in violation of Fourth Section Order No. 124, and therefore not justified. Suspended schedules ordered canceled.

John F. Finerty for Great Northern Railway Company.

S. J. Henry for Northern Pacific Railway Company.

R. H. Schutz for Spokane International Railway Company.

A. W. Hawkins for Oregon-Washington Railroad & Navigation Company.

J. B. Campbell for protestant.

REPORT OF THE COMMISSION.

MEYER, Chairman:

This proceeding involves the lawfulness of proposed increased rates on sheet iron and steel, No. 12 and lighter, from eastern defined territories to Spokane, Wash., and to north Pacific coast terminals. Rates are herein stated per 100 pounds. In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, decided January 29, 1915, we authorized certain rates on commodities to Pacific coast terminals with higher rates to intermediate points, provided that in all instances where the carriers sought to continue or to establish a rate of 75 cents, or higher, from the Missouri River to the Pacific coast, such rate must not be exceeded at any intermediate point, and provided further that rates from Chicago, Pittsburgh, and the Atlantic seaboard to intermediate points must not exceed the rates from the Missouri River to the same points by more than 15, 25, and 35 cents, respectively. By their petition in that proceeding the carriers sought authority to establish a rate of 75 cents on the item in question from the Missouri River and points east thereof to the Pacific coast terminals. This item was stated in the tariffs and referred to in the proceeding as No. 2345-A, as shown in the appendix to the Commission's report at page 644. By inadvertence a prefix "5" appears therewith which refers to a note reading "transfer to schedule B."

This prefix appears before a number of items in the prepared list, and was intended to indicate that the carriers had withdrawn any claim for additional relief under the fourth section with regard to such items, and would publish the rates on such items to intermediate points in accordance with the terms of our original Fourth Section Order No. 124, of June 22, 1911. The Commission, in its report of January 29, 1915, required certain items concerning which additional relief was sought to be transferred to the schedule B list. Such items are enumerated on page 617 of the report, and do not include the item here involved. The appearance of said prefix before this item was therefore a mistake. The item was published as item 1392-A in supplement 16 to R. H. Countiss's tariff I. C. C. No. 997, effective July 15, 1915, but, as published, the terminal rates did not conform to the plans of the carriers as set out in their petition to the Commission. In the table below are shown the rates on this item to Spokane and Pacific coast terminals at the time the petition of the carriers was filed with the Commission, and also the rates proposed by the carriers and the rates authorized by the Commission:

Rates to—	From groups—							
	A	B	C	D	E	F	G	J
Pacific coast terminals at time petition was filed.....	Cents. 95	Cents. 95	Cents. 95	Cents. 95	Cents. 95	Cents. 95	Cents. 95	Cents. 75
Spokane at time petition was filed.....	120	120	124	113	111	90	90	80
Terminals proposed in petition.....	75	75	75	75	75	75	75	60
Spokane proposed in petition.....	120	120	124	113	111	90	90	80
Terminals authorized by Commission.....	75	75	75	75	75	75	75	60
Spokane authorized by Commission.....	110	100	100	90	90	75	75	75

The rates, however, on this item as published July 15, 1915, to Spokane and to the terminals were as follows:

To—	From groups—							
	A	B	C	D	E	F	G	J
Terminals.....	Cents. 75	Cents. 75	Cents. 75	Cents. 65	Cents. 65	Cents. 65	Cents. 65	Cents. 80
Spokane.....	100	90	90	80	80	65	65	65

It will be observed that as published the disparity between the rates to Spokane and to the terminals in no instance is greater than was authorized by the Commission. All of these rates to Spokane, however, are less by 10 cents than the Commission authorized, and in item 1392-B of supplement 17 of the tariff above named, the carriers proposed to increase the Spokane rates to the amounts au-

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thorized by the Commission. The rates proposed in supplement 17, published to become effective September 20, 1915, are as follows:

To—	From groups—							
	A	B	C	D	E	F	G	J
Terminals.....	Cents. 75	Cents. 75	Cents. 75	Cents. 65	Cents. 65	Cents. 65	Cents. 65	Cents. 50
Interior coast cities.....	80	80	80	70	70	65	65	55
Spokane.....	110	100	100	90	90	75	75	75

By appropriate orders of the Commission the schedules naming these rates were suspended until July 18, 1916, pending investigation. The suspended rates to Spokane are those authorized by the Commission in the event the rates named in the carriers' petition were applied to the terminals; but the rates published from groups D, E, F, G, and J to the terminals are 10 cents less than the rates named in the carriers' petition. The relation of rates which would be thus brought about as between Spokane and the coast cities would be violative of that part of Fourth Section Order No. 124, of January 29, 1915, which reads as follows:

It is further ordered, That the degree of deviation herein permitted as between the terminal rates herein approved and the maximum intermediate rates herein authorized shall be the maximum amount by which these petitioners are permitted to depart from the rule of the fourth section, and the disparity between the rates to the terminal points and to intermediate points shall not be widened except under further orders of the Commission.

A further attempt to change the rates appearing in the item under consideration was made in item 1392-C of supplement 18 to the tariff named above, filed to become effective on October 20, 1915, but which was also suspended until July 18, 1916. The only further change proposed is with regard to the rates from groups F and G to interior coast cities, but the latter supplement is in this respect open to the same objection as pointed out above with respect to the rates named in supplement 17. The rates objected to as applied to Spokane are the rates authorized by the Commission to be applied at that point, and are very much less than the rates published to that point prior to July 15, 1915. The relation of rates, however, as between Spokane and the coast terminals is unlawful and in violation of the order of the Commission. The schedules under suspension must be canceled, and rates on the item in question should be published to the coast terminals and intermediate points in strict compliance with Fourth Section Order 124, of January 29, 1915. An order will be entered canceling the suspended schedules.

38 L. C. C.

No. 3848.
SHIPPERS OF EASTMAN, GA.,
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted February 9, 1912. Decided March 31, 1916.

Present class and commodity rates from New York, N. Y., Cincinnati, Ohio, and Memphis, Tenn., to Eastman, Ga., found not unjustly discriminatory. Complaint dismissed.

S. G. McLendon for complainants.

Claudian B. Northrop for Southern Railway Company.

M. P. Callaway for Cincinnati, New Orleans & Texas Pacific Railway Company and other carriers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants in this case are merchants and manufacturers engaged in business at Eastman, Ga. By complaint, filed February 18, 1911, they allege that the rates on classes and commodities from New York, N. Y., Memphis, Tenn., and Cincinnati, Ohio, to Eastman are excessive, unreasonable, unjust, and unlawful. The basis of the complaint is that Eastman is intermediate to Brunswick, Ga., on routes from Memphis and Cincinnati and to Hawkinsville and Macon, Ga., on the rail-and-water routes from New York through Savannah or Brunswick, and that lower rates are maintained from Cincinnati and Memphis to Brunswick than to Eastman and from New York through Savannah and Brunswick to Hawkinsville and Macon. By Fourth Section Application No. 1548 the Southern Railway Company asks for authority to continue all rates in the Southern's tariffs which in any manner contravene the requirements of the fourth section of the act.

Eastman is served by the Wrightsville & Tennille Railroad and the Southern Railway. It is 57 miles southeast of Macon over the Southern and 130 miles west of Brunswick. In dividing the water-and-rail rates between the rail lines and the water lines, defendants consider the water haul from New York and Baltimore to Brunswick equivalent to 250 miles of rail haul. The following table shows the class rates to Eastman, as they stood at the time of the hearing, with actual

distances from Memphis and Cincinnati by rail, and the constructive mileage from New York by water.

	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
Memphis to—														
Eastman.....	564	140	124	111	91	74	57	42	49	35	30½	69	76	62
Brunswick.....	663	91	76	71	66	54	42	31	34	25	21	36	36	42
Cincinnati to—														
Eastman.....	620	144	128	115	95	78	61	46	53	39	34½	73	80	70
Brunswick.....	750	95	80	75	70	58	46	35	38	29	25	40	40	50
New York to—														
Eastman.....	1380	132	115	99	75	59	46	44	40	29	28	64	73	51
Hawkinsville.....	1410	102	91	81	66	55	43	34	47	35	34	52	58	68

¹ Constructive miles.

Complainants presented no testimony in support of their claim that these rates were intrinsically unreasonable. They relied on the long-and-short-haul provision of the fourth section and merely proved that Eastman is intermediate to the points named and that the rates to Eastman were higher than to those points. Defendants stated, however, that rates from New York to Hawkinsville had been depressed by the competition of steamers operating on the Altamaha and Ocmulgee rivers in connection with steamship lines operating between New York and the south Atlantic ports. And the testimony is convincing that the competition of the water lines between New York and the south Atlantic ports is active and compelling and that a very large percentage of the business moving between New York and the south Atlantic ports moves by water. The competition of water carriers on the Altamaha and Ocmulgee rivers on the other hand is not at present active. But it is potential and operates to restrain the rail carriers from increasing the rates to Hawkinsville to the level of the rates to intermediate points. The rates from New York to Hawkinsville were discussed in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, where we expressed the opinion that the rates from New York to Hawkinsville, although lower than the competition at that point necessitated, might properly be somewhat less than the rates to intermediate points. The supplemental report and order issued in the same case, 32 I. C. C., 61, authorized lower rates from New York to Hawkinsville than to intermediate points, provided the rates to intermediate points should be corrected on or before April 1, 1915, not to exceed the rates named in a certain mileage scale. The effective date of the order subsequently was extended to January 1, 1916, and on that date the following rail-and-water class rates were established from New York to Eastman and Hawkinsville:

New York to—	1	2	3	4	5	6	A	B	C	D
Eastman.....	114	94	86	73	60	49	39	47	36	32
Hawkinsville.....	109	95	83	70	59	48	37	47	36	32

This adjustment materially diminishes the previous disparity between the rates to Eastman and Hawkinsville. No special reason appears for lower rates to Eastman than to other near-by points. And under a previous order any commodity rate established to Hawkinsville must be followed upon proper demand by the same rate to Eastman, plus not more than the difference between the class rates to Eastman and Hawkinsville for the class to which the commodity belongs.

Defendants assert that the rates from Cincinnati to Brunswick have been strongly influenced by the rates from New York and eastern cities to the same point, and that the rates to Brunswick are not lower than competition has made necessary. It was found in *Fourth Section Violations in the Southeast, supra*, that the rates from Cincinnati and other Ohio River crossings to Brunswick had been affected by ocean-and-rail rates from Cincinnati and other points, made by the trunk lines through north Atlantic ports and by ocean thence to Brunswick. Lower rates were authorized from Cincinnati to Brunswick than to intermediate points, with the proviso that the rates to intermediate points north of Helena, Ga., should be corrected on or before April 1, 1915, not to exceed the rates to Helena. The effective date for the corrections required was subsequently extended to January 1, 1916. The rates established from Cincinnati to Helena and Eastman, January 1, 1916, are as follows:

Class.....	1	2	3	4	5	6	A	B	C	D
To Eastman.....	144	126	112	92	76	61	46	47	36	32
To Helena.....	145	126	112	92	76	61	46	47	36	32

These rates are commensurate with the rates for like distances shown in the mileage scale previously named and harmonize with the rates to near-by points. No reason appears for according rates to Eastman on any different basis than obtains for the rates to other points in the same territory.

Rates from Memphis to Brunswick and Eastman are made with relation to the rates from Cincinnati and are 4 cents per 100 pounds less on all classes and commodities than the rates from Cincinnati.

The issues presented are so fully covered by the new adjustments of rates under our fourth section orders that a special report at an earlier date was unnecessary. The class and commodity rates established January 1, 1916, and the commodity rates that will be established under the requirements of our fourth section orders have removed, or will remove, unjust discrimination in the rates to Eastman from New York, Cincinnati, and Memphis.

Complaint will be dismissed.

38 I. C. C.

No. 7439.
COMMERCIAL EXCHANGE OF PHILADELPHIA
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted April 20, 1915. Decided March 31, 1916.

Charge of three-fourths of a cent per bushel at the port of Philadelphia, Pa., for the loading of export grain from elevators directly into ocean-going vessels not found to be unjustly discriminatory as compared with the charge of one-half of a cent per bushel for like services at the port of New York, N. Y.

R. D. Jenks and W. A. Glasgow, jr., for complainant.

G. S. Patterson for Pennsylvania Railroad Company.

W. L. Kinter for Philadelphia & Reading Railway Company.

W. C. Coleman for Baltimore & Ohio Railroad Company, intervenor.

Herbert Sheridan for Baltimore Chamber of Commerce, intervener.

F. L. Neall for himself and for certain Philadelphia interests.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Commercial Exchange of Philadelphia, by complaint filed October 28, 1914, alleges that the charge of three-fourths of 1 cent per bushel at the port of Philadelphia, Pa., for the loading of export grain from elevators directly into ocean-going vessels is unjustly discriminatory as compared with the charge of one-half cent per bushel for like services at the port of New York, N. Y. The complaint was originally filed against the Pennsylvania Railroad and Philadelphia & Reading Railway, but on February 13, 1915, upon complainant's application, the Lehigh Valley Railroad, the Erie Railroad, the New York, Susquehanna & Western Railroad, the Delaware, Lackawanna & Western Railroad, the New York Central Railroad, the Central Railroad Company of New Jersey, and the West Shore Railroad, New York Central Railroad Company, lessee, were joined as parties defendant. The Baltimore & Ohio Railroad filed an intervening petition on behalf of defendants, averring that any reduction in the charges at Philadelphia would result in an equivalent reduction at Baltimore, by reason of the active competition between the two ports, which are now on a parity. The Pennsylvania Railroad and the Philadelphia & Reading Railway, hereinafter called defendants, conducted the defense. The Baltimore Chamber of Commerce and Frank L. Neall intervened on behalf of complainant.

Export grain arriving at Philadelphia over the Pennsylvania Railroad is unloaded at Girard Point, Philadelphia, into elevators owned and operated by the Girard Point Storage Company, the capital stock of which is owned by the Pennsylvania Railroad. Grain arriving over the Philadelphia & Reading Railway is unloaded at Port Richmond, Philadelphia, into elevators owned and operated by the Philadelphia Grain Elevator Company, the majority of the capital stock of which is owned by the Philadelphia & Reading Railway. From these elevators the grain is loaded into ocean-going steamships, either directly into vessels lying alongside of the elevators, which method is hereinafter referred to as direct loading, or by the use of barges and floating elevators into vessels lying at other points in the harbor, hereinafter referred to as indirect loading. The same charge of three-fourths of a cent per bushel is applied to either direct or indirect loading, and includes 20 days storage in the elevators.

Tramp steamships, which ordinarily are loaded with a full cargo, usually dock alongside the elevators and are loaded directly. Line steamships, operated in regular service and ordinarily loaded only partly with grain, usually dock at piers other than those by the elevators. During the period from 1910 to 1914, inclusive, approximately 67 per cent of the grain handled through the Girard Point elevators and 55 per cent of that handled through the Port Richmond elevators was loaded indirectly. Only a few line steamships are loaded directly at the Pennsylvania Railroad's elevators. The steamships of several regular trans-Atlantic lines are loaded directly at the elevators of the Philadelphia & Reading Railway. During the period from January 1 to November 15, 1914, only 4 regular line steamships docked at the Pennsylvania Railroad's elevators, while 67 docked at the elevators of the Philadelphia & Reading Railway.

For a number of years carriers have published a charge of one-half cent per bushel for the direct loading of export grain in New York harbor and nine-tenths of a cent for indirect loading, with 10 days storage in the elevators. For storage beyond 10 days an additional charge of one-eighth of a cent per bushel is made for each additional period of 5 days.

No complaint is made with respect to the charge for indirect loading at Philadelphia. Complainant contends that the charge for direct loading at Philadelphia should be one-half cent per bushel, as at New York, stating that it is willing to have the initial storage time reduced from 20 days to 10 days, with an additional charge of one-eighth of a cent for each succeeding period of 5 days.

Complainant states that the existence of a lower charge for direct loading of export grain at New York than at Philadelphia was of no commercial or practical importance prior to 1910 for the reason that shallow water in front of the elevators at New York prevented

ocean-going vessels docking at them. No grain was loaded directly at New York, but under the general custom was lightered alongside the ships at other points in the harbor, the rates to New York including the service, and was loaded into ships by means of floating elevators at a cost of nine-tenths of a cent per bushel to the exporter. Between 1910 and 1913 the Erie Railroad dredged a channel in front of its elevator at Jersey City, N. J., of sufficient depth to enable vessels to dock there, thereby rendering available the one-half cent charge imposed by the Erie for direct loading. Other New York lines, the West Shore, the Delaware, Lackawanna & Western, and the Lehigh Valley, soon followed the Erie's example and either dredged channels alongside of their elevators or made other arrangements whereby ocean-going vessels could load directly from their elevators and secure the benefit of the one-half cent direct loading charge which they maintained. No ocean-going vessel can load directly from the elevators of the Pennsylvania Railroad in the New York harbor, and all grain handled by that line at New York pays the indirect loading charge of nine-tenths of a cent.

The average cargo of grain comprises 200,000 bushels, and a difference of one-fourth of a cent in the direct loading charges at Philadelphia and New York amounts to \$500 per cargo. Complainant's witnesses testified that shippers of export grain at Philadelphia compete with shippers through the port of New York both in the sale of the grain in the European market and also in the purchase of grain in the west; that the difference of one-fourth of a cent per bushel is sufficient in many cases to divert grain from the port of Philadelphia to the port of New York; and that since direct loading has become physically possible at the elevators at New York the number of vessels loaded directly and the volume of their cargoes has increased far more rapidly than the number of vessels and volume of cargoes loaded directly at Philadelphia. The number and volume of shipments of directly loaded grain at the ports of New York and Philadelphia during the period from 1910 to 1914, both inclusive, are given as follows:

Direct loaded grain at the ports of New York and Philadelphia for the years specified.

Year.	New York.		Philadelphia.	
	Number of cargoes.	Number of bushels.	Number of cargoes.	Number of bushels.
1910.....	None.	None.	1	(1)
1911.....	4	750,101	14	2,864,738
1912.....	24	4,693,568	36	6,887,797
1913.....	20	4,332,496	35	6,888,449
1914.....	56	11,188,588	29	5,941,595

¹ Not stated.

² Also three part cargoes that were practically full cargoes amounting to approximately half a million bushels.

Complainant contends that the disparity in the full cargo shipments from Philadelphia and New York is due in large measure, if not entirely, to the higher charge for direct loading at Philadelphia than at New York. The defense, in brief, is that the present charges at Philadelphia are reasonable and that defendants do not fix or control the charge for the service in New York harbor.

Defendants assert that they have made every possible effort to have the direct loading charge at New York increased to three-fourths of a cent, and that while the New York carriers generally favor the increase the Erie Railroad does not and refuses to increase its charge so long as Philadelphia and Baltimore enjoy their present differentials under New York in the rail rates. It is also stated that the one-half cent direct loading charge at New York was established originally to meet the competition of traffic through the Erie Canal in barges that could readily be placed alongside of vessels in the harbor. To meet this competition the rail carriers at New York were obliged to include the placement of barges loaded with grain at the railroad elevators or piers alongside of vessels in the harbor in the service rendered for the rail rate. If vessels could be induced to come alongside the elevators and load directly, any charge at all for direct loading was clear gain as compared with the placing of grain alongside of vessels in the harbor.

None of the carriers defendant reach both the ports of Philadelphia and New York, except the Pennsylvania Railroad, and no grain is loaded directly from the elevators of the Pennsylvania at New York into ocean-going vessels. The Philadelphia & Reading reaches only the port of Philadelphia. The other lines defendant have direct lines only to the port of New York. They may participate in the grain traffic to Philadelphia, but can not control the rates to that point.

The test of the unlawful discrimination is the ability of one or more of the carriers participating in the through routes to remove the discrimination by their own acts. *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115.

There seems to be no justification from a purely transportation standpoint for the apparent inequality in the charges for direct loading at Philadelphia in comparison with the charges imposed at New York. But the inequality can not be found unjustly discriminatory within the meaning of the act, or of a character that we reasonably can enter an order to rectify. We therefore find the defendants are not guilty of unjust discrimination against the port of Philadelphia.

Complainant does not allege that the charge for direct loading at Philadelphia is unreasonable, but contends that it should be less than the charge for indirect loading, inasmuch as direct loading saves the movement by barge to vessel and a second elevation by floating elevators. Defendants show that the charges for direct and indirect

loading do not cover the cost of the service rendered. Defendants make an allowance of one-half cent per bushel to the elevator companies for direct loading and an allowance of 1½ cents for indirect loading, in addition to the charges paid by the shipper, and are required to make up large annual deficits of the elevator companies. Under the circumstances no reason appears for disturbing the present equality of charges for direct and indirect loading.

An order dismissing the complaint will be entered.

No. 7314.

MEEDS LUMBER COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted March 17, 1915. Decided March 31, 1916.

Shipments of lumber from Louisville, Miss., to Sylacauga, Ala., found to have been misrouted, and reparation awarded.

W. N. Webb for complainant.

R. Walton Moore and *F. W. Gwathmey* for Alabama & Vicksburg Railway Company, Alabama Great Southern Railroad Company, and others.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with headquarters at Meridian, Miss. By complaint, filed September 21, 1914, it alleges that the rates charged by defendants for the transportation of five carloads of lumber between January 1, 1913, and April 29, 1913, from Louisville, Miss., to Sylacauga, Ala., dressed in transit at Newton, Miss., were unreasonable and unjustly discriminatory. Reparation is asked.

Louisville is a local point on the New Orleans, Mobile & Chicago Railroad in the east central part of Mississippi. Sylacauga is on the Central of Georgia Railway and the Louisville & Nashville Railroad about 53 miles southeast of Birmingham, Ala., by way of the Central of Georgia. The cars were delivered to the New Orleans, Mobile & Chicago with instructions from the shippers that the lumber was to be dressed at Newton and delivered at

Sylacauga by the Central of Georgia Railway. Newton is the junction point of the New Orleans, Mobile & Chicago and the Alabama & Vicksburg Railway and is about 59 miles south of Louisville. All the cars moved to Newton, and after the lumber was dressed at that point two of them were transported by the Alabama & Vicksburg to Meridian, by the Alabama Great Southern Railroad to Birmingham, and by the Central of Georgia to Sylacauga, a total distance of 295 miles. The other three were moved back through Louisville to New Albany, Miss., by the St. Louis & San Francisco Railroad, thence to Birmingham, and by the Central of Georgia to Sylacauga, a total distance of 449 miles. No joint through rate applied from Louisville to Sylacauga and charges were assessed on all of the cars at a combination rate of $22\frac{1}{2}$ cents per 100 pounds: 7 cents to Newton, 10 cents to Birmingham, $5\frac{1}{2}$ cents to Sylacauga, which rate defendants state was the lowest rate available. It appears, however, that a rate of $18\frac{1}{2}$ cents, composed of a rate of 13 cents from Louisville to East Birmingham, Ala., and a rate of $5\frac{1}{2}$ cents from East Birmingham to Sylacauga, was available consistently with complainant's instructions, and the shipments therefore were misrouted by defendants.

Complainant contends it was the duty of the railroad agent at Louisville to advise it that a shipment dressed in transit at Newton would be subject to a higher rate than if handled in some other manner, citing Conference Ruling No. 214, which, however, fails to support the contention. Joint rates on lumber are cited from Louisville to various points in the same general territory as Sylacauga over routes longer than either of those traversed by the shipments, which rates were lower than the rate which would have applied to the shipments if they had not been misrouted. But the denial of dressing in transit under the rates cited vitiates the comparisons. Complainant also refers to joint rates of 13 cents per 100 pounds on lumber in carloads from Louisville to Anniston and Talladega, Ala., in the vicinity of Sylacauga, by way of Newton, Ala., and Vicksburg to Meridian, Miss., and the Southern Railway beyond. A witness for the New Orleans, Mobile & Chicago Railroad stated, however, that these rates were forced by the necessity of meeting joint rates published by the Alabama & Vicksburg from stations on its line through Newton to the same destinations, and that a similar rate was not established to Sylacauga because the Alabama & Vicksburg did not have joint rates to that point. Defendants show that the short route from Louisville to Sylacauga, by which two of the shipments moved, involves a four-line haul, and that the New Albany route, by which the same rate applied, involves three lines. The $18\frac{1}{2}$ -cent rate described applied for a five-line haul. Defendants

state that the application of the rate attacked resulted solely from compliance with complainant's instructions and that complainant could have availed itself of a lower rate if it had desired to do so. It was testified on behalf of the New Orleans, Mobile & Chicago that the stopping of lumber for dressing in transit requires additional service and entails additional expense, and that effective March 31, 1914, this defendant had eliminated its dressing-in-transit arrangement in connection with shipments from stations on its line to points in Mississippi, Georgia, and Alabama.

We find that the rates charged are not shown to have been unreasonable or unjustly discriminatory over the route of movement, but that the shipments were misrouted; that complainant made the shipments as described and paid and bore charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued if the shipments had not been misrouted; and that it is entitled to reparation with interest. The carrier responsible for the misrouting can not be determined from the present record, so that no order awarding reparation will be entered at present. The proceeding will be held open for 60 days from the date of service hereof to enable defendants to determine the carrier or carriers at fault and to advise us accordingly. In the event that the carriers are unable to agree as to their responsibility, the case will be assigned for further hearing to develop the required information.

Defendants stated at the hearing that the shipments had been undercharged, but there is nothing in the record to substantiate the assertion or to base a finding to that effect.

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No. 7223.
MOORE-SEAVER GRAIN COMPANY ET AL
v.
UNION PACIFIC RAILROAD COMPANY ET AL

Submitted January 9, 1915. Decided March 31, 1916.

Charges collected by defendants for the transportation of corn and oats in carloads from points in South Dakota, Minnesota, and Iowa to Kansas destinations, stopped in transit at Kansas City, Mo., not found to have been in excess of the lawful tariff charges. Complaint dismissed.

H. G. Wilson for complainants.

H. A. Scandrett, L. T. Wilcox, F. S. Hollands, R. B. Scott, and J. F. Finerty, jr., for defendants.

G. W. Hamilton for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are corporations engaged in the grain business at Kansas City, Mo. By complaint, filed August 31, 1914, they allege that the rates charged by defendants for the transportation of corn and oats originating at points in South Dakota, Minnesota, and Iowa, and stopped at Kansas City in transit to points on the Union Pacific Railroad in Kansas, are unreasonable, unjustly discriminatory, and in excess of the lawful tariff charges. Reparation is asked.

The shipments originated on the lines of the Great Northern Railway and the Chicago Great Western Railroad and were moved into Kansas City by the latter carrier and the Chicago, Burlington & Quincy Railroad. At Kansas City they were unloaded into elevators located on the tracks of the Chicago Great Western and the Kansas City Southern Railway and after being cleaned and mixed were switched to the Union Pacific for delivery at Kansas destinations. Defendants publish joint rates on grain from the points of origin to the destinations involved, applicable by way of Kansas City. The tariff naming these rates refers to the individual lines' tariffs for transit service. Tariffs of the Chicago, Burlington & Quincy and the Chicago Great Western make no provision for transit at Kansas City on westbound grain. The Union Pacific's transit tariff provides as follows:

Grain and seeds * * * in straight carloads may be stopped in transit at stations on the Union Pacific Railroad for milling, cleaning, clipping, sacking, mixing, blending, grading, drying, or storage, * * * subject to rates, charges, rules, and other conditions specified * * *.

The tariff further provides that the through rates from point of origin to point of destination will be protected when the transit point lies directly intermediate. Kansas City is so situated.

The shipments began to move August 20, 1913. The joint rates were assessed, with transit at Kansas City, until January 31, 1914, when the Union Pacific notified complainants that the joint rates would not be applied unless the grain coming into Kansas City was delivered to the Union Pacific before unloading into elevators. The shipments moved subsequently to January 31, 1914, were charged the aggregate of the intermediate rates to and from Kansas City. Alleged undercharges were demanded on the shipments which moved previously at the joint rates. The undercharges have been paid on some shipments, but not on all. The movement of grain through Kansas City is usually eastbound. This westbound movement was due to a failure of the crop in Kansas.

Complainants are not asking refund on account of any switching charges incurred in moving the traffic to or from the elevators at Kansas City. In other words, they are apparently willing to bear the expense of transit in so far as the off-line services are concerned. The record is not quite clear with respect to the assessment of these switching charges, but apparently the charges into elevators were absorbed by the carriers which hauled the grain to Kansas City, while a charge amounting to \$5 per car was collected from the shippers for the movement from the elevators to the Union Pacific tracks. In any event, as above stated, the complainants are not asking for a refund of the switching charges. The question presented, which is one of tariff interpretation, is whether the charges for the line-haul services from point of origin to destination are to be assessed upon the joint through rates or upon the sums of the local rates.

Defendants admit that Kansas City is a station on the Union Pacific, but contend that inasmuch as transit service was accorded before the grain reached the Union Pacific, and there was no provision in the tariffs of the inbound carriers for transit at Kansas City, the combinations of local rates were and are applicable. Complainants contend that as Kansas City is a station on the Union Pacific the joint rates should apply, with the transit accorded at Kansas City.

In *Laning-Harris Coal & Grain Co. v. A. T. & S. F. Ry. Co.*, 12 I. C. C., 479, we held that, unless otherwise provided in the carrier's tariffs, the rate to the town or city included delivery on the tracks of the carrier performing the road haul, and that if delivery was demanded on the tracks of another carrier the shipper must pay the lawful charges for the additional service. For the same reasons we hold that the Union Pacific tariff which authorized transit

at stations on its lines did not authorize transit at industries not reached by Union Pacific tracks.

To sustain complainants' contention in this case would be to say that a carrier with a line to Chicago and which provided for transit at stations on its own line would thereby obligate itself to provide or bear the expense of transit at any point in Chicago on the rails of any other carrier. We do not think that such a holding would be either lawful or fair.

As has been seen, the inbound carriers did not provide for transit at Kansas City. If their tariffs had provided for that service under the joint through rates, the Union Pacific could not be heard to say that it would not apply those joint through rates. But in the absence of tariff authority for the transit service that was accorded, the Union Pacific should, as it finally did, decline to apply the joint through rates. Complainants' contention as to the proper interpretation of the tariff is not sustained.

The inbound carriers apparently accorded a transit service for which, under the joint rates, there was no tariff authority. The Union Pacific permitted improper application of its tariff for a part of the period within which these shipments moved. Apparently neither this complainant nor the agents of the Union Pacific at Kansas City understood the proper interpretation or application of the tariff rule.

We remark that the transit tariff here considered, and others of a similar nature, can easily and should be so worded as to prevent misunderstandings of this kind by shippers or by carrier's agents.

The complaint will be dismissed.

38 I. C. C.

No. 7743.

ENGLEHART HEATING COMPANY

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.

Submitted September 28, 1915. Decided April 4, 1916.

Charges collected on various less-than-carload shipments of rough sectional boiler castings from Chattanooga, Tenn., to Atlanta, Ga., found to have been unlawful. Reparation awarded.

E. B. Caldwell for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the steam-heating business at Atlanta, Ga. By complaint, filed February 10, 1915, it alleges that the charges collected by defendants for the transportation of various less-than-carload shipments of articles alleged to be rough cast-iron sectional boiler castings, subsequently to August 15, 1914, from Chattanooga, Tenn., to Atlanta, were unlawful and unreasonable. Reparation is asked.

The articles were shipped in less-than-carload lots, loose, and were billed as rough iron castings. Each article weighed over 15 pounds. In almost every instance defendants' inspectors changed the billing to read "heating furnace parts." Charges were collected on the corrected billing at the third-class rate of 41 cents per 100 pounds applicable to less-than-carload lots of heating furnaces, k. d., and heating furnace castings. When the shipments moved as rough castings, charges were collected at the fifth-class rate of 25 cents and the sixth-class rate of 20 cents, according to the weight of the article, as will presently be explained.

Complainant contends that the castings shipped were not in any sense parts of heating furnaces but parts of steam-heating boilers used in connection with radiators, and that the rates on rough castings should have been applied. The issue presented is thus one of tariff interpretation.

The southern classification provided and still provides as follows:

Furnaces, heating, k. d. (not including pipe or ducts), and heating furnace castings, less than carload.....	3
Boilers, sectional or heating, k. d., less than carload.....	3
Castings and forgings, not otherwise indexed by name, nor machinery, machines, nor parts thereof (see note):	
Loose, each piece weighing over 15 pounds, but not over 200 pounds, less than carload.....	5
Loose, each piece weighing over 200 pounds, less than carload.....	6

NOTE.—The term castings means as from the mold, except that sinker heads and gates may be removed and castings tumbled.

Rough sectional boiler castings were not and are not specifically provided for in the governing classification. We find, however, that the rates on castings and forgings not otherwise indexed by name were properly applicable. The charges assessed therefore exceeded the charges which would have accrued at the fifth-class and sixth-class ratings named above, and were unlawful. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unlawful; that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found lawful, and that it is entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, route, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider further issuing an order awarding reparation.

33 I. C. C.

No. 7721.

UPDIKE ELEVATOR COMPANY ET AL.

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted October 25, 1915. Decided March 31, 1916.

Rates charged for the transportation of oats and corn from Omaha and South Omaha, Nebr., to Douglas, Naco, Hereford, Warren, and Fort Huachuca, Ariz., found not to have been unreasonable or unjustly discriminatory. Reparation denied.

E. P. Smith for complainants.

W. H. Herdman, Hawkins & Franklin, W. F. Herrin, and F. H. Wood for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Updike Elevator Company and the Merriam & Millard Company, corporations engaged in the grain business at Omaha, Nebr. By complaint, filed February 4, 1915, they allege that rates charged by defendants for the transportation of 98 carloads of oats and corn from Omaha and South Omaha, Nebr., to Douglas, Naco, Hereford, Warren, and Fort Huachuca, Ariz., were unreasonable, unjustly discriminatory, and in violation of section 4 of the act. Reparation is asked.

The shipments moved during the period from January 18, 1913, to October 2, 1914: Chicago, Rock Island & Pacific Railway; Chicago, Rock Island & Gulf Railway; and El Paso & Southwestern Company. Charges were collected at a joint rate of 59 cents per 100 pounds that was applicable. Complainants contend that this rate was unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act, in that it exceeded a rate of 55 cents to Los Angeles, Cal., and intermediate California points. Some of the shipments moved more than two years before the complaint was filed and are barred by the statute of limitation.

The destinations stated are located on the El Paso & Southwestern line between El Paso, Tex., and Tucson, Ariz. Prior to October 1, 1913, these defendants did not participate west of El Paso in traffic between the Missouri River and California points, but subsequently

to the opening of the line west of El Paso to through traffic from the coast the rate of 59 cents was protected by an appropriate fourth section application. This application was denied after a hearing and on October 15, 1914, defendants established a rate of 55 cents from Omaha and South Omaha to all points of destination involved. Complainants refer to a rate of 55 cents which applied from Kansas City, Mo., to destinations herein named and emphasize the relation between Omaha and Kansas City to show that any higher rate from the former point than from the latter was unreasonable. Defendants reply that the parity between the two points was not based upon a consideration of relative distance but grew out of a general blanket adjustment to meet market competition on traffic to the terminal points. To Arizona points where the influence was not present the rates from Omaha were higher than from Kansas City, owing to the greater distance. The equality which now exists is stated to have been brought about by the reduction of intermediate rates to the level of the Los Angeles rate. Tables of rates were offered by defendants to sustain the 59-cent rate as intrinsically reasonable. No evidence was offered bearing upon the allegation of unjust discrimination.

No reparation can be awarded on account of departures from the long-and-short-haul rule for shipments moved after the application of the joint rate to Los Angeles over the route involved, unless the rate charged was unreasonable or unjustly discriminatory. *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193.

We find that the rate of 59 cents per 100 pounds is not shown to have been unreasonable or unjustly discriminatory.

The complaint will be dismissed.

38 I. C. C.

No. 7745.
NASHVILLE TIE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted December 4, 1915. Decided April 11, 1916.

Rates charged by defendant for the transportation of oak crossties in carloads from Cumberland Furnace and Sylvia, Tenn., by way of Guthrie, Ky., to Nashville, Tenn., found unreasonable to the extent that they exceeded and exceed the rates contemporaneously applicable to oak lumber from and to the same points. Reparation awarded and reasonable rates prescribed for the future.

M. P. O'Connor for complainant.

William A. Northcutt for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of crossties, with its principal place of business at Nashville, Tenn. By complaint, filed February 11, 1915, it alleges that the rates charged by defendant for the transportation of four carload shipments of oak crossties from Cumberland Furnace and Sylvia, Tenn., to Nashville, in May, 1913, were unreasonable and unjustly discriminatory. Reparation is asked.

Three of the shipments moved from Cumberland Furnace and one from Sylvia. All moved interstate through Guthrie, Ky. No commodity rates were in effect, and fifth-class rates were applied. Charges were collected on the shipments from Cumberland Furnace in the sum of \$540.33 on 174,300 pounds at a rate of 31 cents per 100 pounds, and in the sum of \$109.72 on 42,200 pounds at a rate of 26 cents per 100 pounds on the shipment from Sylvia. A commodity rate of 8 cents per 100 pounds applied and still applies on oak lumber from and to the same points. Effective March 18, 1914, the rate on crossties was reduced to 9 cents per 100 pounds, which rate is still in effect. Both complainant and defendant cite previous cases in which it was held by the Commission that reasonable rates on crossties should not exceed the rates contemporaneously applicable on lumber of the kind of wood from which the ties were made.

We find that the rates charged and the present rate were, are, and for the future will be, unreasonable to the extent that they exceeded

and exceed the rates contemporaneously applicable on oak lumber from and to the same points; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable, and that it is entitled to reparation in the sum of \$476.85, with interest from June 1, 1913. The allegation of unjust discrimination is not sustained.

An appropriate order will be entered.

No. 7691.

COLORADO FUEL COMPANY, LIMITED,

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL

Submitted November 10, 1915. Decided April 4, 1916.

Charges collected for the transportation of one carload of nut coal from Walsenburg, or Hickory Canon, Colo., reconsigned to Coldwater, Kans., and rule prohibiting reconsignment at the through rate after expiration of the first 72 hours from the time of the arrival of shipment at its first destination not found unreasonable. Complaint dismissed.

Henry Lampl and Tom Elcock for complainants.

T. J. Norton, F. E. Andrews, and J. C. Burnett for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are J. R. Everett and C. H. Boice, copartners, engaged in the coal business at Wichita, Kans., and Walsenburg, Colo., under the firm name of the Colorado Fuel Company, Limited. By complaint, filed January 22, 1915, they allege that the charges imposed by defendants for the transportation of one carload of nut coal from Walsenburg, Colo., reconsigned to Coldwater, Kans., were unreasonable to the extent that they exceeded the charges that would have accrued at the joint through rate of \$2.85 per ton. A tariff rule of the Atchison, Topeka & Santa Fe Railway, one of the defendants, prohibiting reconsignment at the through rate after the expiration

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of the first 72 hours from the time of the arrival of a shipment at its first destination is also attacked. Reparation is asked and the establishment of a reasonable reconsignment rule for the future.

It is uncertain upon the record whether the shipment originated at Walsenburg or at Hickory Canon, Colo., but the application of the same rates from both points renders the uncertainty immaterial. The shipment moved on October 7, 1913, consigned originally to Alva, Okla. It was reconsigned in transit to Hutchinson, Kans. It arrived at Hutchinson on October 14, was reconsigned there on the same date to Wilmore, Kans., and reached Wilmore at 10 a. m. on October 19. On October 24 complainants requested reconsignment to Coldwater, Kans., at the balance of the through rate. On the following day they were advised that their reconsigning order could not be complied with, because more than 72 hours had elapsed between the arrival of the shipment at Wilmore and the receipt of the request for reconsignment. On October 29 complainants directed that the shipment be forwarded to Coldwater and delivered to the consignee upon payment of freight charges. The shipment weighed 60,000 pounds and charges were collected in the sum of \$106.50, at a rate of \$2.85 per ton from Walsenburg or Hickory Canon to Wilmore and 2 cents per 100 pounds from Wilmore to Coldwater, including a reconsigning charge of \$3 at Hutchinson and a demurrage charge of \$6 at Wilmore. The reconsigning and demurrage charges are not attacked.

Defendants' tariff named a joint rate of \$2.85 per ton from Walsenburg and Hickory Canon to Wilmore and Coldwater. The tariff governing reconsignment provided as follows:

The destination of coal and coke, in carloads, may be changed when through rates are in effect under the following conditions:

If destination is changed in transit to, or within 24 hours after arrival at the first destination, a reconsigning charge of \$2 per car will be assessed. If made after 24 hours, and within 48 hours from arrival at first destination, a charge of \$3 per car will be assessed. If made after 48 hours, and within 72 hours from arrival at first destination, a charge of \$4 per car will be assessed. After the expiration of 72 hours no reconsignment will be permitted except on combination of locals.

The rates and charges applicable were as follows under the published tariffs: \$2.85 per ton from Walsenburg or Hickory Canon to Wilmore; 2 cents per 100 pounds from Wilmore to Coldwater; \$2 for reconsignment in transit to Hutchinson; \$2 for reconsignment from Hutchinson to Wilmore; \$6 demurrage at Wilmore; total, \$107.50. The shipment therefore was undercharged \$1.

Complainants show that defendants do not restrict their reconsignment service for Kansas intrastate traffic in the manner attacked; also that notice of nondelivery frequently is not received in 38 I. C. C.

time to permit reconsignment within the 72-hour period, and that consignees may, by delaying refusal, force upon shippers the alternative of disposing of shipments for less than the contract price or of forwarding them at a loss to another destination. They contend that not less than six days should be allowed for reconsignment. Defendant Atchison, Topeka & Santa Fe Railway replies that the 72-hour rule is a reasonable restriction upon the practice of reconsignment; that the rule is satisfactory to shippers in general, and that no extension should be required to provide relief from occasional hardships resulting from the fraudulent conduct of consignees or the business methods of shippers.

A tariff rule limiting reconsignment at the through rate to a period of 72 hours after the arrival of shipments at the first destination was considered in *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 16 I. C. C., 387, and *Sunnyside Coal Mining Co. v. D. & R. G. R. Co.*, 16 I. C. C., 558, and was not condemned. In *Dietz Lumber Co. v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 75, a tariff rule prohibiting reconsignment at the through rate after the expiration of 48 hours from the time of arrival was found not to be unreasonable.

We find that the charges and rule assailed have not been shown to be unreasonable, and an order dismissing the complaint will be entered.

88 I. C. C.

No. 7734.
FARGO FOUNDRY COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted January 3, 1916. Decided April 11, 1916.

Rates charged for the transportation of molding sand from St. Paul, Minn., to Fargo, N. Dak., not shown to have been unreasonable. Complaint dismissed.

F. O. Gibbs for complainant.

D. F. Lyons for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the foundry business at Fargo, N. Dak. By complaint, filed February 8, 1915, as amended at the hearing, it alleges that the rates charged by defendant for the transportation of three carload shipments of sand from St. Paul, Minn., to Fargo during the period from August 29, 1912, to June 5, 1915, were unreasonable to the extent that they exceeded the rates applicable on crushed stone and rubble between the same points. Reparation is asked. A claim covering the shipments moved August 29, 1912, and May 31, 1913, was presented to the Commission informally July 13, 1914. Rates are stated in cents per 100 pounds.

The shipments consisted of three carloads of molding sand. Charges were assessed on the first two at a rate of 9 cents and on the third at a rate of 8.1 cents. A rate of 7 cents was applicable on carload shipments of crushed stone and rubble from St. Paul to Fargo over the same route during the period when the first two shipments moved; a rate of 8.1 cents when the last shipment moved.

Complainant contends that sand and crushed stone are analogous commodities, and that both should have taken the rate applicable on crushed stone. An intrastate rate of 6.1 cents applicable on sand and crushed stone from St. Paul to Moorhead, Minn., 1 mile east of Fargo, is cited. Before January 1, 1914, Moorhead took the same rates on sand and crushed stone as Fargo. But the so-called Cashman act prescribing maximum rates of transportation within the state of Minnesota took effect January 1, 1914, which accounts for

the 6.1-cent rate on sand for the short-line distance of 241.2 miles from St. Paul to Moorhead. Because of this intrastate rate defendant voluntarily reduced its former rate of 9 cents on sand from St. Paul to Fargo to 8.1 cents.

Complainant cites *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 515, in which it was said that as crushed stone has about twice the value of sand and gravel, and as it does not load quite as heavily, a rate on that commodity slightly higher than on sand and gravel would seem to be justified. The sand involved in that proceeding was common building sand. Molding sand differs from ordinary sand in that from 40 to 50 per cent of it consists of clay and it is free from gravel. It costs complainant \$1.50 per ton f. o. b. St. Paul, while common sand costs only 25 cents per ton f. o. b. Muskoda, Minn., near Fargo, and is transported over defendant's line to Fargo at a rate of 2½ cents. Crushed limestone is said to be worth about 95 cents per ton at the crusher. There is no competition between crushed stone and molding sand. Complainant procures all of its supply of molding sand from St. Paul, the nearest point where it is found, and has done so for the past nine years, practically during its entire corporate existence. The movement is light. Only three carloads are shown to have moved between the points involved during the years 1912 to 1915, inclusive.

The rate of 7 cents applicable on carload shipments of crushed stone between St. Paul and Fargo, which complainant is seeking to have applied on carload shipments of molding sand, was established by defendant on March 1, 1906, to meet a similar rate applicable from Sandstone, Minn., to Fargo over the Great Northern Railway. Sandstone is 244 miles from Fargo. This rate was established to care for a substantial movement of crushed stone, and was induced by active competition with the Great Northern. The rate on sand was established under substantially different conditions.

We find upon the facts disclosed that the rates charged on the shipments involved are not shown to have been unreasonable, and an order will be entered dismissing the complaint.

38 I. C. C.

No. 7941.

HUNTER-ROBINSON-WENZ MILLING COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted November 1, 1915. Decided April 4, 1916.

Upon complaint alleging that the rate charged for the transportation from Memphis, Tenn., to Gulfport, Miss., of bran in carloads, originating at Jackson, Mo., and reconsigned at Memphis, was unreasonable and that defendants' rules relative to reshipping rates on bran from Memphis to Gulfport were unreasonable and unduly prejudicial; *Held*, That the rates and rules attacked were inapplicable to the shipments involved, and that the legal joint rate from Jackson to Gulfport should have been applied. Complaint dismissed.

Charles Rippin for complainant.

H. G. Herbel for St. Louis, Iron Mountain & Southern Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the grain business, with its principal office at St. Louis, Mo. By complaint, filed April 23, 1915, it alleges that the rate of 10 cents per 100 pounds charged by defendants for the transportation from Memphis, Tenn., to Gulfport, Miss., in August, 1913, of three carloads of bran, which originated at Jackson, Mo., was unreasonable to the extent that it exceeded 6 cents per 100 pounds, and that defendants' tariff rule requiring the execution by shippers of a certificate in connection with shipments of bran moving under reshipping rates from Memphis to Gulfport was unreasonable and unduly prejudicial. Reparation is asked.

The shipments were originally consigned to Memphis, Tenn., by way of the St. Louis, Iron Mountain & Southern Railway. Complainant surrendered the original bills of lading to an agent of that line at St. Louis and received in exchange bills of lading showing Gulfport, Miss., as the destination, routing by way of the St. Louis & San Francisco Railroad from Memphis, and a rate of 6

cents per 100 pounds from Memphis to Gulfport. The shipments moved: St. Louis & San Francisco Railroad from Memphis to Birmingham, Ala.; Louisville & Nashville Railroad beyond to Gulfport. The record does not show the rate charged for the transportation of the shipments from Jackson to Memphis or the total amount of charges collected. The legal rate on bran in carloads from Jackson to Memphis was 8 cents per 100 pounds. The 10-cent rate charged from Memphis to Gulfport was the local rate. A reshipping rate of 6 cents per 100 pounds applied from Memphis to Gulfport on grain and grain products, including bran, in carloads, by way of the St. Louis & San Francisco Railroad to New Albany, Miss., the New Orleans, Mobile & Chicago Railroad to Hattiesburg, Miss., and the Gulf & Ship Island Railroad beyond, but to obtain this rate shippers were required to execute and attach to the shipping order a certificate reading as follows:

Tender is hereby made to the _____ Railroad Company of a bill of lading, dated at _____ for car number _____ loaded with _____, destined to _____ for the purpose of securing reshipping rates on the commodity covered thereby as named in tariff number _____.

This tender is made with a specific guaranty on our part that the grain, grain product, or feed, or the articles used in the manufacture of the grain product or feed provided for in the said bill of lading originated beyond _____.

Complainant was not informed of this requirement and did not comply with it. Its contentions are that the enforcement of the requirement was unreasonable and discriminatory, as the billing showed that the shipments originated beyond Memphis and that reparation should be awarded because the St. Louis, Iron Mountain & Southern Railway executed bills of lading in which the 6-cent rate was inserted but did not forward the shipments over a route by which that rate applied or inform complainant that the execution of a certificate was necessary. Defendants reply that the execution of a certificate in all cases is a necessary and reasonable requirement designed to prevent the application of the reshipping rate on local shipments and to furnish a proper transit record.

Both of complainant's contentions assume that no joint rate was applicable. We find, however, that defendants' tariffs named a joint rate of 16 cents per 100 pounds from Jackson to Gulfport applicable on bran, in carloads, with reconsignment at Memphis, which rate was applicable.

Defendants' rule requiring the execution of a certificate in connection with reshipping rates from Memphis was inapplicable to the shipments involved, and the joint rate applicable is not even alleged to be unreasonable. The complaint will, therefore, be dismissed, but defendants will be expected promptly to refund any overcharge that may exist on the shipments.

No. 7801.
EASTERN & WESTERN LUMBER COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted September 22, 1915. Decided March 31, 1916.

Derendants' charges for the transportation of a carload of lumber under practices and published rules for ascertaining the net weight, by taking the difference between the gross weight of car and shipment at point of origin and the actual tare at final destination, not found to be unreasonable. Complaint dismissed.

C. B. Duffy for complainant.

B. C. Dey and *W. B. Fenton* for defendants.

F. G. Donaldson and *W. C. McCulloch* for West Coast Lumber Manufacturers Association, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing lumber, with its principal office at Portland, Oreg. By complaint, filed March 1, 1915, it alleges that defendants' charges for the transportation of a carload of lumber from Portland to McGill, Nev., shipped June 23, 1914, were based on an excessive weight and were unjust and unreasonable. Reparation is asked in the sum of \$5.02, and the assessment of charges on future shipments on the basis of the difference between the gross and tare weights on the McGill scales. The West Coast Lumber Manufacturers Association intervened in behalf of complainant.

The shipment consisted of 3 by 12 inch kiln-dried fir planking and moved over the lines of the Southern Pacific Company and the Nevada Northern Railway. It was in transit about 18 days. It was loaded in a steel underframe wooden box car with a tin roof, marked tare 43,600 pounds. The shipment was weighed June 23, 1914, on Portland terminal track scales, which registered a gross weight of 96,000 pounds. It was check weighed at Roseburg, Oreg., June 24, when the gross weight registered was 96,200 pounds. On July 11 it was reweighed, loaded and light, at McGill, the gross weight indicated being 95,120; actual tare weight, 42,660 pounds. Defendants collected charges at the tariff rate of 57 cents per 100 pounds on 53,340

pounds, the difference between the gross weight at Portland and the actual tare weight at McGill. The accuracy of the Portland scales is not questioned.

Complainant insists that the McGill scales were weighing light and offered in evidence the tare weight of the car in question as determined four months before and again seven months after the shipment moved. The former was 43,600 pounds, the latter 43,100 pounds, while the actual weight at McGill was 42,660 pounds. Defendants' witness could not account for the rather unusual difference between the McGill weight and the others, although he attributed it to the mechanism of the scales. Complainant asserted that the actual tare weight at McGill always was lighter than the marked tare weight, although it had not checked all of its shipments at McGill. Defendants introduced an exhibit showing five cars shipped by complainant to McGill, of which four moved previously to the shipment involved. The actual tare weights, at McGill, of three of the cars were greater than the marked tare weights. Intervener filed an exhibit showing 11 shipments to McGill which were weighed at various points of origin, Cottage Grove, Silverton, Salem, Albany, and Roseburg, Oreg., and reweighed at McGill. The gross weight at McGill was less in each case than at the points of origin, while the actual tare weight was less than the marked tare weight. Conflicting testimony was offered as to the effect of climate and weather conditions and whether the car or the lumber lost weight in transit. Complainant's witness did not know how long the lumber was in the kiln before shipment, but stated that the usual period was three or four days. The McGill scales belong to the Steptoe Mining & Refining Company, and were used for weighing copper, but were under defendants' control, and the weighmaster reported to defendants. Two of these reports, filed as exhibits, one dated June 22, the other July 1, 1914, were based on appropriate periodical tests and showed the scales in good order. Defendants' expert witness stated that it was always desirable to get the actual tare weight, but not practicable, on account of the delay, to get it at the point of origin.

Following our report *In Re Weighing of Freight by Carrier*, 28 I. C. C., 7, a national code of weighing rules was adopted by the American Railway Association, which was tentatively indorsed by the Commission, June 9, 1914, and subsequently published in defendants' tariffs. The rules prescribe that carload freight should be weighed at the point of origin, or as near thereto as practicable, and that if a loaded car is weighed at destination and the actual tare weight ascertained it shall be used in lieu of the marked tare weight. They further prescribe that weights of commodities subject to shrink-

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age in weight from their inherent nature, properly obtained at or near the point of origin, should not be changed, except as provided in tariffs of the carriers, except that obvious error should be dealt with on the merits of the individual case.

We find that the charges assailed are not shown to have been unjust or unreasonable, and the complaint will be dismissed.

No. 7946.

B. GABLOWSKY

v.

GREEN BAY & WESTERN RAILROAD COMPANY ET AL.

Submitted September 18, 1915. Decided March 31, 1916.

Rate charged for the transportation of seven carloads of logs from Toleens Spur, Mich., to Seymour, Wis., not found to have been unreasonable. Complaint dismissed.

Paul Gablowsky for complainant.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

J. B. Call for Green Bay & Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture and sale of woodenware, under the trading name of Seymour Woodenware Company, at Seymour, Wis. By complaint, filed April 21, 1915, she alleges that defendants' rate of 11 cents per 100 pounds charged for the transportation of seven carloads of logs shipped between January 25, 1915, and February 19, 1915, from Toleens Spur, Mich., to Seymour was unreasonable and unjustly discriminatory. Reparation is asked.

The shipments moved: Chicago, Milwaukee & St. Paul Railway from Toleens Spur to Green Bay, Wis., 122 miles; Green Bay & Western Railroad thence to destination, 17 miles. The rate charged was and is defendants' specific joint rate on lumber, applicable to logs and other forest products. The Chicago & North Western Railway
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maintains a commodity distance scale on logs, applicable between stations in Wisconsin and stations in Michigan, state or interstate, where no specific commodity rates are in effect, by which a rate of 4.08 cents per 100 pounds applies for a distance of 122 miles. This rate plus the local rate of 1.5 cents applicable on logs over the Green Bay & Western Railroad from Green Bay to Seymour gave an aggregate of 5.58 cents. Complainant's testimony was confined to this comparison and the statement that the 11-cent rate assailed is prohibitive.

The shipments involved were the first and only shipments made by complainant from points on the Chicago, Milwaukee & St. Paul Railway. The total movement of logs from points on that line to points on the Green Bay & Western Railroad is small. The 11-cent rate appears to be fairly in line with other rates applicable on logs from points on the line of the initial carrier to points on the line of the delivering carrier.

We find that the rate assailed is not shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed.

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No. 8008.

PUYALLUP & SUMNER FRUIT GROWERS' ASSOCIATION
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted November 16, 1915. Decided April 4, 1916.

Rate charged for the transportation of a carload of canned berries from Puyallup, Wash., to Salt Lake City, Utah, not found to have been unreasonable. Complaint dismissed.

J. E. Belcher for complainant.

S. J. Henry for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in canning fruits, with its principal place of business at Puyallup, Wash. By complaint, filed May 13, 1915, it alleges that defendants' rate of \$1.35 per 100 pounds for the transportation of a carload of canned berries on October 20, 1913, from Puyallup to Salt Lake City, Utah, was unreasonable to the extent that it exceeded 87 cents per 100 pounds. Reparation is asked.

The shipment moved as routed by complainant: Northern Pacific Railway to Silver Bow, Mont.; Oregon Short Line Railroad thence to destination. No joint through rate was applicable and charges were collected in the sum of \$558.90 on 41,400 pounds at a combination rate of \$1.35, composed of a rate of 70 cents, minimum weight 40,000 pounds, to Silver Bow, and the fifth-class rate of 65 cents, minimum weight 36,000 pounds, beyond. A combination rate of 87 cents per 100 pounds applied from Puyallup to Salt Lake City by way of the Northern Pacific Railway to Portland, Oreg., the Oregon-Washington Railroad & Navigation Company to Huntington, Oreg., and the Oregon Short Line Railroad to Salt Lake City; composed of a rate of 12 cents, minimum weight 36,000 pounds, to Portland, and a rate of 75 cents, minimum weight 40,000 pounds, beyond. Salt Lake City is 1,183 miles from Puyallup by the route of movement and 1,048 miles by the Portland route. Effective May 27, 1914, after the shipment had moved, defendants established a joint commodity rate of 87 cents per 100 pounds, minimum weight 30,000 pounds, over the route of movement. Complainant relies on this subsequently estab-

lished rate. Before the shipment moved complainant was erroneously quoted a rate of 85 cents by an agent of the initial carrier.

Neither the misquotation of a rate nor the voluntary reduction of a rate to meet that of a competing line or route is alone sufficient to base an award of reparation. A route was open to complainant at the rate asked and the damage sustained, if any, was avoidable. See also *Conference Ruling 200 (b)*.

We find that the rate charged is not shown to have been unreasonable, and the complaint will be dismissed.

No. 8027.

KEYSTONE LUMBER COMPANY

v.

BENNETTSVILLE & CHERAW RAILROAD COMPANY
ET AL.

Submitted November 9, 1915. Decided April 4, 1916.

Shipment of lumber from Drake, S. C.; to McDonoughs, N. J., not found to have been misrouted and rate charged not found illegal or unreasonable.

P. B. Walton for complainant.

J. H. Ketner for Seaboard Air Line Railway; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

W. G. Spangle for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and New York, Philadelphia & Norfolk Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in lumber, with its main office at Williamsport, Pa. By complaint, filed May 13, 1915, it alleges that the rate charged by defendants for the transportation of a carload of pine lumber from Drake, S. C., to McDonoughs, N. J., was unreasonable and unjustly discriminatory. Reparation is asked.

The shipment was made by complainant February 9, 1914, consigned to McDonoughs, routed "Raritan River R. R." The Raritan

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River Railroad was merely the delivering carrier. No intermediate carriers were specified, or gateways through which the shipment should move. Drake is a local station on the Bennettsville & Cheraw Railroad, and the shipment was moved by that carrier to Kollock, S. C., where it was turned over to the Seaboard Air Line. The Seaboard Air Line hauled the car from Kollock to Richmond, Va., and delivered it there to its northbound connections. The shipment weighed 38,200 pounds, and charges were collected in the sum of \$95.50 at the joint through rate of 25 cents per 100 pounds in effect from Drake to McDonoughs. The same joint rate applied by way of Norfolk or Portsmouth, Va., and by that route exceeded the aggregate of the rates applicable to and from Norfolk. A joint rate has since been established by way of Norfolk that does not exceed the aggregate of intermediate rates.

The carriers' routing was consistent with the shipper's routing instructions and the shipment was not misrouted. *Paine Lumber Co. v. C., C. & St. L. Ry. Co.*, 24 I. C. C., 626. The local rate from Drake to Richmond was 12 cents; the local from Richmond to McDonoughs, 14 cents. The joint rate charged therefore was not illegal over the route of movement, and the combination by way of Norfolk lower than the joint through rate by that route is not enough to prove that the rate assailed was unreasonable. As no other evidence was adduced against it, the complainant will be dismissed.

38 I. C. C.

No. 7860.
ULLAND COAL COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

Submitted November 2, 1915. Decided April 4, 1916.

Rates charged for the transportation of coal in carloads from various points on the Louisville & Nashville Railroad in Kentucky and Tennessee to Hunt street, Cincinnati, Ohio, found not to have been unreasonable and reparation denied.

G. M. Freer for complainants.

E. D. Mohr for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are William T. Ulland and Davis E. Ulland, co-partners, engaged in the coal business at Cincinnati, Ohio, under the firm name of Ulland Coal Company. By complaint, filed March 27, 1915, they allege that the rates charged by defendants for the transportation of coal in carloads from various points on the Louisville & Nashville Railroad in Kentucky and Tennessee to complainants' yards at Cincinnati during the period from January 17, 1913, to February 23, 1915, were unreasonable, unjustly discriminatory, and in violation of section 4 of the act. The controversy was presented to the Commission informally in October, 1913, and a list of shipments on which reparation is sought was submitted January 15, 1915.

All of the coal involved originated at points in the Louisville & Nashville Railroad's Middlesboro-Jellico coal district in southeastern Kentucky and northeastern Tennessee. Complainants' coal hoppers are located at Hunt street, on the east side of Cincinnati, on tracks used by the Norfolk & Western Railway and the Cincinnati, Lebanon & Northern Railway and about 1 mile beyond the Louisville & Nashville terminals located near the north end of the Louisville & Nashville bridge over the Ohio River at Cincinnati. The hoppers are leased from the Norfolk & Western. The shipments in issue were carried by the Louisville & Nashville to the northern end of its Cincinnati bridge and switched thence by the Pittsburgh, Cincinnati, Chicago & St. Louis to the Cincinnati, Lebanon & Northern, which switched them to destination. A blanket rate of 90 cents per ton

applied on coal from the Middlesboro-Jellico district to Cincinnati, while the switching charges imposed from the Louisville & Nashville's Cincinnati terminals to destination were \$1.50 per car by the Pittsburgh, Cincinnati, Chicago & St. Louis and \$5 per car by the Cincinnati, Lebanon & Northern, prior to August 15, 1914; \$1.50 per car by the Pittsburgh, Cincinnati, Chicago & St. Louis; and 20 cents per ton by the Cincinnati, Lebanon & Northern on and subsequently to August 15, 1914. Complainants' shipments averaged 42 tons per car, so that the switching charges applicable were \$6.50 per car prior to August 15, 1914, and an average of \$9.90 per car subsequently. The Louisville & Nashville absorbed \$2 per car, with the result the net rate per ton from the points of origin to Hunt street was \$1.007 per average carload prior to August 15, 1914, and \$1.088 on and subsequently to that date. Only three of the cars involved moved subsequently to August 15, 1914. Effective April 6, 1915, after all of the shipments had moved, the 90-cent Cincinnati rate was made applicable to Hunt street, which is the rate desired by complainants for the period of movement. Complainants' only remaining interest in the controversy therefore relates to reparation.

Complainants' lease from the Norfolk & Western provides that only Norfolk & Western coal will be handled, except when it can not be obtained in sufficient quantities to satisfy complainants' requirements. The shipments in controversy were received by complainants at times when Norfolk & Western delivery was prevented by flood conditions.

Complainants' evidence consists almost exclusively of comparisons of the rates assailed with rates to other points on the Cincinnati, Lebanon & Northern and to points on other roads within the switching limits of Cincinnati. Prior to April 6, 1915, the same rates applied from the points of origin involved to Hunt street and Elsinore avenue, the first station beyond, while the rates to Florence avenue and Eden Park, the next two stations beyond Elsinore avenue, were composed of the 90-cent rate to Cincinnati, the \$1.50 switching charge of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, and a switching charge of 25 cents per ton of the Cincinnati, Lebanon & Northern, with the Louisville & Nashville absorbing \$2 per car. A joint rate of 96 cents per ton applied to all points beyond within the Cincinnati switching limits. Since April 6, 1915, the Cincinnati rate of 90 cents has applied to Hunt street and Elsinore avenue; a rate of 94 cents to the other points named. Rates from various coal-producing groups on the Louisville & Nashville in Kentucky and Tennessee to all points within the switching limits on the Norfolk & Western were on a higher basis than the rates to Cincinnati prior to April 6, 1915, but on that date were put on

the same basis. Numerous other rates from the coal-producing groups involved to points on other roads within the switching limits of Cincinnati were higher than the rates to Cincinnati.

Defendants contend that the rates attacked were not unreasonable and show that other southern roads, including the Chesapeake & Ohio Railway, the Southern Railway, and the Cincinnati, New Orleans & Texas Pacific Railway, charged rates to Hunt street higher than their flat Cincinnati rates. Numerous rates on coal are also cited between various points in widely distributed sections of the country. But details relative to the character and application of the rates cited are omitted, so that their only value is to show that higher rates than the rates in issue did obtain somewhere.

The Louisville & Nashville showed that the earnings on its service in connection with the shipments specified in the complaint amounted to 3.02 mills per ton-mile prior to August 15, 1914, and to 3.87 mills per ton-mile on and subsequently to August 15, 1914, and prior to April 6, 1915. These earnings are said to have been lower than the earnings under any coal rates ever ordered in by the Commission, but an exhibit submitted by defendants shows some exceptions to the assertion, especially with reference to rates on slack coal. The Louisville & Nashville adds that none of the coal rates to Cincinnati are upon a reasonable basis, but are depressed by controlling water competition on the Ohio River from Pittsburgh and West Virginia mines. In support of this contention it stated that all the southern roads apply higher rates to intermediate points than to Cincinnati. The same defendant also shows that the rates to stations on its line between the points of origin involved and Cincinnati are all materially higher than the rates attacked. It is stated that the rates of the Norfolk & Western are equally affected by water competition, but that Hunt street is its Cincinnati delivery point, and that its fixed policy is not to charge more to intermediate points than to more distant points. Defendants denied that there was any relation between the rates to the various suburban points within the Cincinnati switching limits, stating that the rates established in each case were the result of competition. It is admitted that this system resulted in discriminations and violations of the fourth section, and it is stated that the reduction in the rate to Hunt street on April 6, 1915, was part of a general readjustment which became effective at that time, involving 283 reductions and 5 increases, and which eliminated existing fourth section departures and other discrepancies.

We find that the rates attacked are not shown to have been unreasonable and that the discrimination proved is not shown to have damaged complainants.

An order will be entered dismissing the complaint.

No. 8197.
L. A. STROBEL COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 26, 1915. Decided March 31, 1916.

Rate charged for the transportation of a less-than-carload shipment of wood moldings from New Orleans, La., to Cincinnati, Ohio, found not unreasonable and complaint dismissed. Refund of overcharge in weight directed.

H. C. Frommann for complainant.

W. A. Eggers and *J. A. Logan* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture of picture frame moldings at Cincinnati, Ohio. By complaint, filed July 29, 1915, it alleges that the charges collected by defendants for the transportation of two cases of wood moldings shipped from New Orleans, La., to Cincinnati, in 1914, were unreasonable. Reparation is asked.

Complainant made a prepaid shipment of two cases of wood moldings from Cincinnati on June 22, 1914, consigned to San Jose, Costa Rica, and routed care of United Fruit Company at New Orleans. Upon arrival at New Orleans the shipment was delivered to the United Fruit Company for transportation to San Jose, but the Costa Rican authorities had an embargo against shipments from and through New Orleans because of a plague at that point. On July 28, 1914, the United Fruit Company, acting as complainant's agent, although apparently without authority, shipped the moldings, collect, from New Orleans to complainant at Cincinnati by way of defendants' lines. Charges were collected in the sum of \$15.14, at a rate of 98 cents per 100 pounds on a weight of 1,545 pounds. The United Fruit Company is not a defendant herein.

Complainant objects to the payment of full charges for the return transportation, but is willing to pay half. It also objects to the assessment of the return charges on a weight in excess of the weight on which charges were prepaid for the original movement in the opposite direction, 1,169 pounds. The record establishes the fact that the original weight was the correct weight and that the return shipment was overcharged to the extent of \$3.68, which sum should be refunded.

As soon as complainant learned that the molding was being returned to Cincinnati it telephoned the local office of the Illinois Central Railroad at Cincinnati to divert the shipment to Galveston. The record does not show when this was done or where the shipment was at the time. Less-than-carload shipments generally are not subject to diversion en route. Under the act a carrier may be required to comply with shippers' instructions relative to diversion only under proper tariff provisions, but in this case failure to do so or the failure to have such a provision is not under attack. It is not shown that defendants were in any way responsible for the return of the shipment to Cincinnati. Complainant accepted it there and must pay the lawful tariff charges for the transportation. No testimony was presented relative to the unreasonableness of the rate charged.

An order dismissing the complaint, accordingly, will be entered.

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No. 8062.
WOODLAND LUMBER COMPANY
v.
NORFOLK SOUTHERN RAILROAD COMPANY ET AL.

Submitted September 27, 1915. Decided April 4, 1916.

Claim for reparation on a carload of lumber shipped from Hertford, N. C., to Atlantic City, N. J., and reconsigned to Tom's River, N. J., denied. Complaint dismissed.

T. J. Nixon, jr., for complainant.

J. F. Dalton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the lumber business at Philadelphia, Pa. By complaint, filed May 28, 1915, it alleges that on account of an error in the car number shown on the bill of lading a carload of lumber shipped January 14, 1913, from Hertford, N. C., consigned to Atlantic City, N. J., was not diverted en route to Tom's River, N. J., as requested, and that unreasonable charges were collected in consequence. Reparation is asked. The claim was presented to the Commission informally December 5, 1914.

The shipment was delivered to the Norfolk Southern Railroad at Hertford by the Major & Loomis Company, consigned to complainant at Atlantic City. The bill of lading, which was prepared by the consignor, showed the car initials and number as P. M. 52048. The correct number of the car was 52084. Upon receipt of the bill of lading from the shipper, complainant sought to have the car diverted en route to Tom's River, but the notice to divert contained the erroneous car number and the diversion was not made. Upon arrival at Atlantic City the shipment was reconsigned to Tom's River, in accordance with instructions from complainant.

The shipment weighed 40,000 pounds and moved: Norfolk Southern Railroad to Berkeley, Va.; New York, Philadelphia & Norfolk Railroad to Delmar, Del.; Pennsylvania system through Camden, N. J., to Atlantic City; Pennsylvania system back through Camden to Tom's River. Charges were collected in the sum of \$96. The rate applicable was 24½ cents per 100 pounds, composed of a rate of 19½ cents from Hertford to Tom's River and a rate of 5 cents for the 118-

mile additional haul from Camden to Atlantic City and return. In addition, a charge of \$5 was provided for reconsignment at Atlantic City. The correct charges were \$104, so that the shipment was undercharged \$8. Camden is on the direct route from Hertford to Tom's River. Complainant apparently requested the Pennsylvania Railroad to make the diversion to Tom's River before the shipment first reached Camden, and if the diversion had been made, the rate of 19½ cents from Hertford to Tom's River would have been applicable and without charge for the diversion.

The difficulty with reference to the shipments arose through the initial error of the consignor in showing an erroneous car number on the bill of lading. Complainant admits that the error was the consignor's, but insists that the agent of the initial carrier should have detected and corrected it, and that defendants should be held responsible for the damage which complainant sustained as a result of the agent's delinquency. It is a common practice for consignors to prepare bills of lading, and we will not require defendants to refund the additional charges resulting from the error of the shipper in this case. *Conference Ruling No. 348.*

We find that complainant is not entitled to reparation, and an order will be entered dismissing the complaint.

SS L. C. C.

No. 8364.

R. HUDSON BURR ET AL., AS RAILROAD COMMISSION-
ERS OF THE STATE OF FLORIDA,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted January 30, 1916. Decided April 11, 1916.

Rates on coal in carloads from Birmingham, Acmar, and Margaret, Ala., points in the Birmingham coal district, to Quincy, Tallahassee, Madison, Monticello, and Apalachicola, Fla., not found to be unduly discriminatory. Complaint dismissed.

T. S. Trantham for complainants.

R. Walton Moore and *Merrell P. Callaway* for Central of Georgia Railway Company, Atlantic Coast Line Railroad Company, and Seaboard Air Line Railway Company.

N. W. Proctor for Louisville & Nashville Railroad Company.

T. M. True for Apalachicola Northern Railroad Company.

C. J. Acosta for Georgia, Florida & Alabama Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainants, members of the Railroad Commission of the State of Florida, allege that defendants' rates on coal from Birmingham, Acmar, and Margaret, Ala., points in the Birmingham district, to Quincy, Tallahassee, Madison, Monticello, and Apalachicola, Fla., hereinafter referred to as the Florida points, are unreasonable and unduly discriminatory as compared with rates to Thomasville and other south Georgia points, but in their brief admit that the sole question is of relationship between the Florida and the south Georgia points.

The contention of the complainants, in substance, is that it is unduly discriminatory to maintain to the Florida points on coal from the Birmingham district rates which yield greater ton-mile earnings than are yielded by the rates on like traffic to the south Georgia points. The complainants' testimony consisted of a statement of the rates on coal to the Florida and the south Georgia points referred to; the distances via the shortest routes; the ton-mile earnings; and the rates, on the basis indicated, which they argue should

be established. There is also of record testimony of a manufacturer at Quincy that he uses about 3,000 tons of coal per annum at that point and that a reduction in rates would cause an increase in coal consumption and lessen the use of wood for fuel at the Florida points named. No other testimony was offered by the complainants.

The defendants argue that a finding of undue prejudice and disadvantage can not be predicated solely upon a showing of difference in rates for somewhat similar distances and that the burden of proof is upon the complainants to show in addition to such differences a substantial similarity of circumstances and conditions of transportation to the points alleged to be unduly preferred and those as to which complaint is made.

Three of the defendants, the Louisville & Nashville Railroad, the Central of Georgia Railway, and the Seaboard Air Line Railway, serve Birmingham. The mines in the Birmingham district are largely south and west of the city, while the lines of the two last-named carriers reach the city from the east and but few mines are located thereon. Acmar and Margaret are on the Central of Georgia and their output is purchased largely by that carrier or the Ocean Steamship Company. The lines serving Birmingham district mines, the Atlanta, Birmingham & Atlantic, the Southern, the St. Louis & San Francisco, and the Mobile & Ohio, are not parties defendant.

The Louisville & Nashville runs south from Birmingham to Pensacola, Fla., thence east to River Junction, Fla., where it connects with the line of the Seaboard Air Line to Jacksonville, Fla., through Quincy, Tallahassee, and Madison, which are 19, 43, and 98 miles, respectively, east of the junction. The Atlantic Coast Line serves Albany, Bainbridge, and Thomasville, which are intermediate on the routes to Jacksonville on Birmingham district coal received by that carrier at Montgomery, Ala., or Albany. The only one-line haul from the Birmingham district to any of the points involved is that of the Atlanta, Birmingham & Atlantic to Thomasville. Monticello is 24 miles south of Thomasville on a branch of the Atlantic Coast Line and is also served by a branch of the Seaboard Air Line. Quincy and Tallahassee are also served by the Georgia, Florida & Alabama Railway, and Madison by the Georgia & Florida Railway. Apalachicola is served by the Apalachicola Northern, which connects with the Louisville & Nashville at River Junction.

The rates per net ton and the distances to the south Georgia and the Florida points are shown below. The distances are from Birmingham proper and the ton-mile earnings therefore are figured without deduction for the gathering expense from Birmingham district mines. The average length of the gathering haul, it was testified, is not less than 20 miles.

From Birmingham to—	Dis- tances.	Rate.	Per ton- mile.
Florida points:	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Quincy.....	305	215	7.05
Tallahassee.....	311	215	6.91
Monticello—			
A. C. L.....	323	215	6.47
S. A. L.....	495	255	5.15
Madison.....	365	265	6.99
Apalachicola.....	501	260	5.00
Georgia points:			
Albany.....	257	175	6.81
Bainbridge.....	271	185	6.82
Thomasville.....	308	185	6.00

Approximately 90 per cent of the coal used at or shipped out of Jacksonville comes in by water from up the Atlantic coast. The rate on coal from Birmingham to Jacksonville is \$1.90, and the rates to the intermediate south Georgia points, it was testified by the defendants' witnesses, are lower than would have been maintained except for the competition at Jacksonville. Coal from Birmingham is not transported to Jacksonville via the routes through the Florida points involved.

The complainants also call attention to the rate of \$1.50 from Birmingham to River Junction by way of the Louisville & Nashville. This rate, figured on the distance from Birmingham proper of 421 miles, yields ton-mile earnings of 3.56 mills. The complainants contend that the spread between the rate to River Junction and those to the Florida points involved is too great. In explanation of the River Junction rate it was testified that in 1901 the Louisville & Nashville, because of lower rates applied by other lines, reduced its rates from the Birmingham district to New Orleans and Mobile to \$1.25 and \$1.10, respectively. The \$1.10 rate was also established at Pensacola, which generally took the same rates as Mobile, and the rate to River Junction and points intermediate was made \$1.50. In *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187, the carriers were found to have justified an increase in the rates on coal from Alabama mines to New Orleans from \$1.25 to \$1.40. In this connection it was testified by the witness for the Louisville & Nashville that that carrier proposes to increase its rate from Birmingham to River Junction to at least \$1.65.

In their brief the defendants make the following statement:

There are now and have been in the past many differences in rates to the various Florida points, due to the existing rate basis observed throughout the south. Under this existing basis rates at many common points are less than at local points. Rates at the ports and water competitive points are less than at intermediate points. Many rates have been made on combination. For a considerable period a general readjustment of all rates to all points throughout the south and southeast generally has been under way. The coal rates to Florida points have been considered with the idea of eliminating the fourth

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section violations wherever possible, and to bring about a proper and correct alignment of rates one point with another in view of the present construction of the fourth section of the act. In making this recheck not only was it sought to work out a harmonious alignment of rates to Florida points as between themselves, but also to establish as far as possible a relationship between rates to the west Florida points and to the south Georgia points now involved in this complaint.

Under this tentative readjustment it is proposed (in event advances to south Georgia points not secured) to continue the rate of \$2.15 to Quincy and Tallahassee, reduce the Seaboard Air Line rate of \$2.55 to Monticello to \$2.25, reduce the rate of \$2.55 to Madison, Fla., to \$2.25, and make rates to other points throughout northern Florida on the same or a relative basis. In fact, rates to about 2,100 destinations in Florida are involved to which similar treatment is to be extended. It is impossible to pick out and select Quincy, Tallahassee, Monticello, and Madison without considering the entire northern Florida territory and as a part of the same adjustment to consider and treat the entire Florida territory.

It is further stated that in case there are increases to the south Georgia points, as to which relief under the fourth section would be necessary, the rates to the Florida points would be higher to the same extent than those above stated, Tallahassee and Quincy being made 30 cents over Bainbridge, Monticello 40 cents over Thomasville, and Madison the same as Monticello, or 30 cents over Valdosta, Ga. There is considerable difference, it will be noted, in the rates to Monticello of the Atlantic Coast Line and Seaboard Air Line. Assuming the rate of the former will not be increased, it would appear that the only Florida point involved which under the proposed readjustment would benefit by a more favorable relationship to the south Georgia points is Madison. No opinion, of course, is intended to be expressed here as to the propriety of proposed changes which would result in increased rates to any of the points referred to herein.

The contention of the complainants, if adopted, would result in a finding of undue prejudice and disadvantage to the Florida points upon a showing of relative distances and ton-mile earnings without regard to other factors influential, and sometimes necessarily so, in rate making and to its probable effect upon the rate adjustment to Florida and south Georgia generally. There is not before us any showing of actual disadvantage to the Florida points in competing with the south Georgia points, and upon consideration of the facts of record we are of opinion, and find, that the rates challenged have not been shown to be unduly discriminatory. As hereinbefore stated, no testimony was presented by the complainants under their allegation of unreasonableness.

The complaint should be dismissed. It is so ordered.

38 I. C. C.

No. 5619.
S. J. GREENBAUM COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 25, 1915. Decided April 11, 1916.

Complainant not found to have been damaged by the imposition of alleged unreasonable and unjustly discriminatory rates on distillers' dried grain in carloads from Midway, Ky., to Norfolk and Newport News, Va., Baltimore, Md., and Philadelphia, Pa., for export. Rates involved having been readjusted by defendants since the hearing on a basis satisfactory to complainant, complaint dismissed.

Ellis & Donaldson and C. E. Cotterill for complainant.

R. Walton Moore and M. Carter Hall for Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the distilling business at Midway, Ky. By complaint, filed March 13, 1913, it alleges that the rates charged by defendants for the transportation of certain shipments of distillers' dried grain in carloads from Midway to Norfolk and Newport News, Va., Baltimore, Md., and Philadelphia, Pa., for export, prior to April 27, 1912, were unreasonable and unjustly discriminatory to the extent that they exceeded rates from Louisville, Ky., to the same destinations. Reparation is asked. Complaint was first made to the Commission in regard to the adjustment on November 9, 1908, but was only in the form of a letter and not sufficient to toll the statute of limitation. The claims based on all shipments delivered more than two years before the formal complaint was filed are therefore barred.

The Southern Railway and the Louisville & Nashville Railroad reach Louisville with their own rails; the Chesapeake & Ohio Railway, by trackage rights over the rails of the Louisville & Nashville to and from Lexington, Ky., the trackage agreement providing that the Chesapeake & Ohio shall not handle traffic from local stations on the Louisville & Nashville between Louisville and Lexington. Midway is about 80 miles east of Louisville on a branch line of the

Southern extending in a northeasterly direction from Versailles, Ky., to Georgetown, Ky. It is about 20 miles west of Lexington, Ky., but is not intermediate to Lexington from Louisville. It is also served by the Louisville & Nashville and over that line is directly intermediate from Louisville to the destinations involved. The Louisville & Nashville's rates from Midway are not in issue and that road is not a party defendant.

Defendants' rates when the shipments involved moved were as follows, rates stated in cents per 100 pounds:

From—	To Norfolk, Newport News.	To Balti- more.	To Philadel- phia.
Louisville.....	11	13	14
Lexington.....	11	13	14
Midway via Lexington.....	17	19	20

The rates from Louisville were joint through rates. The rates from Midway in which the Southern participated were combinations of the Southern's local rate of 6 cents to Lexington with the rates beyond maintained by other lines. The Southern states that its rates from Louisville were made to meet the rates which the Louisville & Nashville and the Chesapeake & Ohio had established before the Southern entered the field.

Complainant relies mainly on the record in *Greenbaum Co. v. C. & O. Ry. Co.*, 25 I. C. C., 352, which case had to do with the relationship of a rate of 17 cents on distillers' dried grain for export from Midway through Lexington to Norfolk and Newport News over the Louisville & Nashville in connection with the Chesapeake & Ohio with a rate of 11 cents from Louisville to the same destinations. Rates over these lines and on the traffic named, from Midway, in excess of the rates on like traffic over the same lines from Louisville were held to be unjustly discriminatory. The defendants in that case elected to remove the discrimination by reducing the rate from Midway to 11 cents, the rate applicable from Louisville. The Southern was not a defendant in that case, and did not elect to meet the rates published by the Louisville & Nashville. Complainant's plant is located on the line of the Southern at Midway, and there is no physical connection between the Louisville & Nashville and the Southern at that point. The failure of the Southern to meet the 11-cent rate published by the Louisville & Nashville from Midway is the cause of the present complaint.

After the case was submitted the Southern readjusted its rates on distillers' dried grain from Midway and Louisville in conformity with our decision in *Greenbaum Co. v. L. & N. R. R. Co.*, 31 I. C. C.,

38 I. C. C.

699, with the result that the rates from Midway no longer exceeded the rates from Louisville. At present the rates from Midway are lower than the rates from Louisville. Complainant is entirely satisfied with the present rates. Its contention that the former rates from Midway were intrinsically unreasonable was definitely abandoned by counsel, and no evidence was adduced to support it. The only questions left for determination therefore are whether the rates applicable from Midway during the two-year period prior to the filing of the complaint were unjustly discriminatory, and if so, whether complainant was damaged by the discrimination.

As the rates on distillers' dried grain from Louisville to the Virginia cities and Atlantic ports were made to meet the competition of the more direct line formed by the Louisville & Nashville and the Chesapeake & Ohio, the Southern denies that the maintenance of higher rates from Midway constituted unjust discrimination in favor of Louisville. Complainant urges that the Southern competes with the Louisville & Nashville at Midway as well as at Louisville, and that the distances from Midway to the Virginia cities and Atlantic ports are materially less than the distances from Louisville to the same points, concluding from this that no justification existed for higher rates from Midway than from Louisville. But the rates from Midway were the same in amount over both lines.

We held, among other things, in *Greenbaum Co. v. L. & N. R. R. Co.*, *supra*, that the domestic rates on distillers' dried grain over the Southern and connecting lines from Midway through Lexington to Atlantic ports were unjustly discriminatory in comparison with the rates to the same point from Louisville and Lexington, to the extent that they exceeded the rates contemporaneously in effect over the same route from Louisville. The relationship of the Midway rates with the Louisville rates on traffic that might move from Louisville by way of Cincinnati, Ohio, or Danville, Ky., was not so indicated. The Danville route is the circuitous route of the Southern Railway through Asheville, N. C. We did find, however, that the rates of the Southern Railway and its connections from Midway by way of Cincinnati were unjustly discriminatory to the extent that they exceeded by more than 2 cents the rates in effect from Lexington. The record does not show whether the shipments involved moved through Lexington, Cincinnati, or Danville.

Let it be assumed, however, that the export rate of 11 cents on distillers' dried grain from Louisville to Norfolk and Newport News, the 13-cent rate to Baltimore, and the 14-cent rate to Philadelphia were unjustly discriminatory against Midway. The question of damage to complainant still remains. Complainant's only witness testified that on export business complainant's principal point of

competition was Louisville; that there were dealers in distillers' dried grain at Louisville selling in the same markets as complainant during the period involved; that the selling price quoted by complainant was determined by the selling price quoted by Louisville dealers; and that in order to compete successfully with dealers in Louisville complainant absorbed the 6-cent difference in freight rates on every shipment in controversy. It is also stated that a majority of the shipments were sold f. o. b. Midway, although some were sold f. o. b. Atlantic seaboard and others f. o. b. the foreign port. But complainant is said to have borne the burden of the difference in rates complained of regardless of the manner of sale, as a price 6 cents per 100 pounds less than the market price in Louisville was quoted or the Louisville price with provision for a deduction of 6 cents per 100 pounds from the invoice. A witness for defendants testified that there had been no shipments during the period in question of distillers' dried grain on export bills of lading from Louisville to the destinations under consideration over the Southern and connecting lines. Also, that the physical conditions at Louisville are such as to prevent the Southern being a factor in the handling of distillers' dried grain at that point, as the distilleries there are located on the tracks of other lines than the Southern. It is argued on behalf of defendants that to grant reparation in this case would amount to an award of punitive damages.

In *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S., 184, it is said, at page 207, that—

In view of the express provisions of section 8 of the act to regulate commerce, it was error to refuse to charge that "to entitle the plaintiff to recover, the jury must be satisfied that it sustains some loss or injury due to the fact that the defendant was carrying at the same time at lower rates coal shipped by other shippers."

From the decision in the case cited it is apparent that in order to hold a carrier or carriers responsible in damages for unjust discrimination it must be affirmatively established, among other things, that traffic actually moved at the lower rate from the point alleged to have been unlawfully favored over the line of the carrier or carriers responsible for the discrimination. In view of the testimony adduced by defendants that no distillers' dried grain moved from Louisville during the period involved over the Southern and connecting lines at the rates attacked, and the absence of any affirmative showing to the contrary by complainant, we are unable to find that the Southern Railway is responsible for any damage that complainant may have sustained.

The complaint will be dismissed.

No. 7632.

JOSEPH JOSEPH BROTHERS & COMPANY
v.
MAINE CENTRAL RAILROAD COMPANY ET AL.

Submitted January 13, 1916. Decided April 11, 1916.

Complaint attacks rates on old steel rails and scrap iron from various points in Maine and New Hampshire to points in Pennsylvania. No one familiar with the facts appeared at the hearing; *Held*, That the evidence offered is incompetent and complaint dismissed.

H. C. Barnes and *C. E. Cotterill* for complainant.

S. S. Perry for Maine Central Railroad Company; Boston & Maine Railroad; New York, New Haven & Hartford Railroad Company; and Central New England Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling scrap iron and steel, with its principal place of business at Cincinnati, Ohio. By complaint, filed December 26, 1914, it alleges that the rates charged by defendants for the transportation of 60 carloads of old steel rails and 3 carloads of scrap iron shipped from Portland, Me., and other points in the same general territory in Maine and New Hampshire to Coatesville, Lebanon, Danville, and Newberry, Pa., between February 18, 1911, and December 18, 1911, were unreasonable. Reparation is asked. Claim was presented to the Commission informally on November 23, 1912.

This case was originally set for hearing at Cincinnati, September 8, 1915. Complainant's attorney appeared and stated that no testimony would be introduced, as the parties had entered into a stipulation of facts which would be submitted within a few days. The stipulation was not received by the Commission within a reasonable time, and the case was again set for hearing, at complainant's request.

Complainant was represented only by counsel who had no personal knowledge of the facts upon which the complaint was based or of whether or not complainant had actually paid and borne the freight charges on the shipments involved.

The present rates are satisfactory to complainant and its only remaining concern is reparation. Complainant offered no evidence

to support its claim, relying upon defendants' admission in an application filed by them for permission to make refund on the informal docket that the rates charged were unreasonable, and upon the facts contained in papers forming a part of the informal docket, including data relative to the shipments involved and the rates applicable thereto, receipted freight bills, a statement of the grounds upon which permission was sought to make reparation, etc. These papers were introduced into the record by complainant without objection by defendants.

But four of the seven defendants named filed answers to the formal complaint. Three of the responding defendants deny that the rates assailed were unreasonable and urged upon hearing that, notwithstanding their admissions for the purposes of the informal proceedings, the complainant is under the burden of proving the rates assailed to be unreasonable. We agree with this contention and find that the evidence offered is incompetent. The complaint therefore must be dismissed.

38 I. C. C.

No. 7697.

PEERLESS WIRE FENCE COMPANY

v.

WABASH RAILROAD COMPANY ET AL.

Submitted October 22, 1915. Decided April 11, 1916.

Carload of wire fence shipped from Adrian, Mich., to Menard, Tex., found to have been misrouted. Reparation awarded.

W. H. Burnham for complainant.

E. S. Macken for Wabash Railroad Company.

Thomas Bond and *W. C. Preston* for St. Louis & San Francisco Railroad Company and receivers; St. Louis, San Francisco & Texas Railway Company and receivers; and Fort Worth & Rio Grande Railway Company and receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of wire fencing and gates at Adrian, Mich. By complaint, filed January 25, 1915, it alleges that because of misrouting by defendants unreasonable charges were collected on a carload of wire fence shipped December 28, 1910, from Adrian to Menardville, Tex., and delivered there March 24, 1911. Reparation is asked. The claim was presented to the Commission informally February 13, 1913.

The shipment weighed 47,000 pounds and was delivered to the Wabash Railroad at Adrian routed specifically "Mo. Pac. Orient via Angelo" to Menardville, Tex., at a rate of 72 cents per 100 pounds. Menardville was the consignees' post office address. It did not become a railroad station until February, 1911, when the Fort Worth & Rio Grande Railway completed its extension from Brady, Tex. The name was then changed to Menard. The wire fence contained in the shipment was intended for use on a ranch between Menard and San Angelo, Tex., and delivery was desired at San Angelo. The shipment moved over the Wabash to East Hannibal, Ill., where it was rebilled by that carrier to Kansas City, Mo., but the words "via Angelo" were omitted from the routing. From Kansas City the shipment was forwarded to Brady over the following lines: Missouri Pacific Railway; Kansas City, Mexico & Orient

Railroad; St. Louis & San Francisco Railroad; Oklahoma Central Railway; St. Louis, San Francisco & Texas Railway; and Fort Worth & Rio Grande Railway, by way of Wichita, Kans., Altus, Chickasha, and Ada, Okla., and Fort Worth, Tex. The consignees refused to accept delivery of the shipment at Brady. Subsequently to the completion of the Fort Worth & Rio Grande to Menard the shipment was forwarded to that point and delivery was made there March 24, 1911. Complainant paid charges on the shipment in the sum of \$408.90 on the basis of a rate of 72 cents per 100 pounds from Adrian to Brady and the Texas distance scale rate of 15 cents per 100 pounds from Brady to Menard. The rate on straight carloads of wire fence from Adrian to Brady at the time of shipment was 74 cents per 100 pounds and before the shipment moved from Brady the same rate had been established to Menard. On the basis of the rates applicable under the published tariffs in force when the shipment moved from Adrian there is an outstanding undercharge of \$9.40.

A rate of 74 cents per 100 pounds applied from Adrian to San Angelo. Complainant contends that if defendants had followed the routing specified in the bill of lading the shipment would have been delivered, as intended by complainant, at San Angelo. It asserts that "Angelo" is a well-known contraction of San Angelo and that the omission by the Wabash of "via Angelo" from the routing from East Hannibal resulted in delivery at Menard instead of San Angelo.

The bill of lading tendered with the shipment was defective. The destination designated therein was not a railroad station, and there were no published rates in effect to that point when the shipment was delivered to the initial carrier. The provisions of the bill of lading were impossible of execution, as is conceded by the initial carrier. It was the duty of the initial carrier's agent to call upon the consignor for further instructions before forwarding the shipment.

We find that the shipment moved as described; that the charges thereon were paid and borne by complainant; that the Wabash Railroad misrouted the shipment; that complainant was damaged thereby to the extent of the difference between the charges collected and the charges that would have accrued if the shipment had been delivered at San Angelo, Tex., and that it is entitled to reparation from the Wabash Railroad in the sum of \$61.10, with interest from March 24, 1911. An order will be entered accordingly.

38 I. C. C.

No. 7729.

GARDEN CITY SAND COMPANY

v.

NEW YORK, CHICAGO & ST. LOUIS RAILROAD
COMPANY ET AL.

Submitted July 17, 1915. Decided April 11, 1916.

Charges collected for the transportation of molding sand in carloads from Valparaiso, Nickel, Ind., to Chicago, Ill., not shown to have been unreasonable. Complaint dismissed.

Edwin C. Crawford for complainant.

F. H. Schmitt for New York, Chicago & St. Louis Railroad Company and Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the molding sand business at Chicago, Ill. By complaint, filed February 6, 1915, as amended at the hearing, it alleges that the rate of 70 cents per net ton charged by defendants for the transportation of 53 carloads of molding sand from Valparaiso, Nickel, Ind., to Chicago during the period from March 20, 1913, to August 20, 1913, was unjust and unreasonable to the extent that it exceeded 50 cents per net ton. Reparation is asked.

The shipments originated at Nickel, a nonagency station 3 miles farther from Chicago than Valparaiso. Fifty-one shipments were moved by the New York, Chicago & St. Louis Railroad to Stony Island, Ill., and by the Belt Railway of Chicago and the Chicago & North Western Railway thence to specified industries in Chicago on the Chicago & North Western Railway. The two remaining shipments moved to an industry in Chicago located on the Chicago, Burlington & Quincy Railroad, which road is not made a party defendant.

No joint through rate was applicable to the shipments. Prior to August 22, 1913, two days after the last shipment moved, tariffs of the New York, Chicago & St. Louis Railroad provided a rate of 40 cents per net ton on molding sand from Nickel to Chicago but not to the plants of the consignees involved. Agent Lowrey's tariff, I. C. C. No. 17, effective at that time, provided for the absorption of

switching charges on various commodities destined to points within the Chicago switching district, but excepted sand. Charges therefore were collected at a combination rate of 70 cents per net ton, composed of a rate of 40 cents to Stony Island and a rate of 30 cents beyond. Effective August 22, 1913, defendants established a joint rate of 50 cents per net ton on molding sand from Nickel to various industries in Chicago, including those involved, and it is upon the basis of this subsequently established rate that reparation is asked.

Since October 26, 1914, the through rate has been 53 cents per net ton. Defendants express willingness to refund the difference between the charges collected and the charges that would have accrued at the 50-cent rate. They do not concede, however, that the rate charged was unreasonable, and complainant has introduced no evidence establishing that it was. The fact that switching charges were not absorbed prior to August 22, 1913, without additional evidence to show that the rate charged was unreasonable, does not afford a sufficient basis for an award of reparation.

We find that the rate charged is not shown to have been unjust or unreasonable, and an order will be entered dismissing the complaint.

38 I. C. C.

No. 7810.
COLUMBIA OIL COMPANY OF NEW YORK
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted September 10, 1915. Decided April 11, 1916.

Reparation awarded on account of an unreasonable rate charged for the transportation of 53 carloads of refined petroleum in tank cars from Freemansburg, Pa., to Constable Hook, N. J.

Harry C. Adams for complainant.

Arthur W. Rinke for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in producing and distributing petroleum and its products, with its principal office in New York, N. Y. By complaint, filed March 5, 1915, it alleges that the rate charged by defendant on 53 carloads of refined petroleum loaded from pipe lines into tank cars at Freemansburg, Pa., and transported thence to Constable Hook, N. J., was unreasonable. Reparation is asked.

The shipments aggregated 347,223 gallons, weighing 2,291,666 pounds, and moved during the period from June 2, 1913, to June 20, 1913. The oil was loaded from pipe lines at Freemansburg and was transferred to steamers at Constable Hook for export. The published tariff rate applicable from Freemansburg to Constable Hook was 6½ cents per 100 pounds and charges were collected in the total sum of \$1,489.58.

Constable Hook is about 76 miles from Freemansburg and the rate charged was equivalent to a revenue of more than 17 mills per ton-mile, or nearly 37 cents per car-mile, or \$28.10 per car. For more than six years prior to April 26, 1913, defendant had maintained a rate of 10 cents per barrel on refined petroleum loaded from pipe line into tank cars at Freemansburg and carried thence to Constable Hook, which was increased, effective April 26, 1913, to 6½ cents per 100 pounds. Complainant protested against the increased rate and effective September 28, 1913, the rate of 10 cents per barrel of 50 gallons was restored, and was maintained until February 23, 1915, when it was increased 5 per cent, to 10½ cents. The

rate charged on complainant's shipments was equivalent to a rate of 21.45 cents per barrel of 50 gallons, and was established subsequently to January 1, 1910. It represented an increase of 114.5 per cent, and defendant has made no attempt to prove it just or reasonable. The 10-cent rate described that applied both before and after the shipments moved yielded nearly 8 mills per ton-mile, and \$13.10 per car, or more than 17 cents per car-mile.

We find that the 6½-cent rate assailed was unreasonable to the extent that it exceeded the rate of 10 cents per barrel of 50 gallons applicable before and after the shipments moved; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it was damaged in the sum of \$795.13, and that it is entitled to reparation with interest from August 2, 1913.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect since September 28, 1913, save for the 5 per cent increase on February 23, 1915, no order will be entered for the future.

33 I. C. C.

No. 7902.

PIONEER PEARL BUTTON COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted January 14, 1916. Decided April 11, 1916.

Charges collected by defendants for the transportation of less-than-carload shipments of pasteboard button cabinets from St. Louis, Mo., to Poughkeepsie, N. Y., not found to have been unlawful or unreasonable. Complaint dismissed.

A. S. Garland for complainant.

John M. Sternhagen for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of pearl buttons, with its principal place of business at Poughkeepsie, N. Y. By complaint, filed April 10, 1915, it alleges that defendants' application of the double first-class rate of \$1.75 per 100 pounds to the transportation of seven less-than-carload shipments of pasteboard button cabinets from St. Louis, Mo., to Poughkeepsie, during the period from May 2, 1913, to May 8, 1914, was unjust and unreasonable. Reparation is asked.

The shipments aggregated 11,160 pounds, and were charged for at double the first-class rate of 87.5 cents, or \$1.75 per 100 pounds as provided in official classification for—

paper boxes, corrugated or other than corrugated, s. u., outside measurement exceeding 1 inch in depth, and exceeding 15 united inches, length, width, and depth added * * *; not nested, in boxes or crates.

Charges were collected in the total sum of \$194.70. One shipment made on December 2, 1913, of three cases was undercharged 59 cents. Complainant contends that the shipments should have taken the first-class rating provided by official classification for "cabinets, n. o. s., other than k. d., flat; wrapped, crated, or boxed."

The shipments consisted of compartment boxes with attached covers, made entirely of pasteboard except that some are edged with thin sticks of wood. The covers are hinged to the long edge of the top of the boxes and include the opposite side of the box. Lifting

the cover exposes a fixed tray of compartments, which covers a drawer of compartments. Some are more complicated but they are of the same general character. The boxes come in various sizes and are shipped in individual pasteboard boxes, in crates, or in wooden boxes. The boxes themselves and the statement that filing cabinets made of pasteboard edged with wood or steel and equipped with drawers are rated first class constitute complainant's only evidence in support of its contention. Defendants state that the articles usually charged for as cabinets n. o. s. are dentist's cabinets, doctor's cabinets, and spool silk cabinets, which are made of wood and are denser than pasteboard button cabinets; that the classification item applied to the shipments involved was intended to cover compartment as well as plain boxes; and that the inclusion of complainant's boxes in the item cabinets, n. o. s., would require the inclusion of many other kinds of pasteboard boxes in the same item and a complete revision of the classification of paper boxes.

We find that the rating applied was lawfully applicable, and that the charges collected were not illegal. The evidence adduced is insufficient to prove the rating unreasonable, and the complaint will be dismissed.

38 I. C. C.

No. 4495.

FLOUR CITY STEAMSHIP COMPANY ET AL.

v.

LEHIGH VALLEY RAILROAD COMPANY ET AL.

Submitted October 26, 1915. Decided April 11, 1916.

1. The Flour City Line, a carrier on the great lakes, paid charges which accrued in connection with the transfer of interstate shipments from the end of its steamers' gangplanks into the cars of defendant rail carriers at Buffalo, N. Y. There was no through route or joint rate by way of the Flour City Line and defendants' lines, and no tariff authority for the intermediate service; *Held*, That the responsibility for the transfer of the shipments rested upon the shippers.
2. Reparation denied to complainant, the successor in interest of the Flour City Line.

Francis B. James; William P. Trickett; E. E. Williamson; and Littleford, James, Ballard & Frost for complainant.

Douglas Swift and Stewart C. Pratt for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding is supplemental to *Flour City S. S. Co. v. L. V. R. R. Co.*, 24 I. C. C., 179, and relates exclusively to claims for reparation by the Flour City Steamship Company, hereinafter called complainant, against the Lehigh Valley Railroad and the Delaware, Lackawanna & Western Railroad, on account of certain charges on shipments of flour in October, November, and December, 1911. The claims were filed February 24, 1918.

The shipments were moved from Minneapolis by various rail carriers, hereinafter called the western carriers, to Duluth or Superior; by the Flour City Line to Buffalo, N. Y.; and by the Lehigh Valley Railroad or Delaware, Lackawanna & Western Railroad, hereinafter called the Lackawanna, to New York City.

The western carriers and defendants had long been parties to an established through route and a joint rail-lake-and-rail rate on flour from Minneapolis to New York, restricted to movement by the so-called standard or railroad-owned steamship lines between Duluth and Buffalo. Defendants absorbed out of the joint rate the handling charges from the end of the steamship's gangplank at Buffalo

and also permitted certain shipments, particularly of "hold" freight, to be unloaded directly at their docks, without charge for wharfage. Just before the shipments involved moved the western carriers published a reduced proportional rate on flour from Minneapolis to Duluth or Superior, when destined to Buffalo or other lake ports, and applicable on traffic by any lake line. The Flour City Line, predecessor of the complainant, was established as an independent lake line and filed a tariff with the Commission naming a rate on flour, originating at Minneapolis, from Duluth or Superior to Buffalo, when destined beyond. Defendant carriers declined to make any arrangement for the establishment of a through route in connection with the Flour City Line. But through bills of lading covering the shipments involved were issued at Minneapolis by the western carriers, showing New York City as the destination and naming a through rate composed of the rates described through to Buffalo and defendants' local rate from Buffalo to New York. Freight charges were prepaid on this basis either to destination or to Buffalo. When the shipments arrived at Buffalo defendants declined to recognize the through bills of lading issued by the western carriers or to absorb the charges for handling the shipments beyond the ends of the gangplanks of the vessels bringing them to Buffalo. They insisted on treating the shipments as local traffic, and in most instances required local bills of lading to be taken out from Buffalo. Parts of the cargoes were discharged at the Lehigh Valley docks. But further use of those docks and of the Lackawanna's docks by the Flour City Line was then refused, and the remainders of the cargoes were discharged at the public Union docks. The affairs of the Flour City Line, including its assets and accounts receivable, were subsequently taken over by complainant.

A through route and joint rate from Minneapolis to New York City, including complainant's line, was sought in the original proceeding. No joint rate was ordered, but we expressed the opinion that on traffic moving by way of complainant steamship line the defendant carriers should not receive a division in excess of 11 cents per 100 pounds, the amount of their local rate, which should cover the handling of the traffic from the end of the gangplank at Buffalo to New York City. We found, however, that the defendants discriminated unjustly against the complainant steamship company, in favor of the standard lines; that they should honor through bills of lading issued by the western carriers in connection with complainant steamship company; and that they should accord traffic moving by way of complainant's steamers the same facilities as they accorded traffic moving by way of the standard lines.

38 I. C. C.

Complainant now asks reparation from defendants in the amount of certain handling and dockage charges incurred in connection with the transfer of the shipments in question from the end of the gangplanks of the Flour City Line steamers into defendants' cars or into warehouses pending reshipment. All of these charges were paid by the Flour City Line and carried by it as debits against the consignors.

The rate maintained by the Flour City Line when the shipments moved applied only to the end of the gangplank at Buffalo, and defendants' local rate from Buffalo to New York applied only to the rail movement and not from the end of the gangplank. There was no published tariff provision for the intermediate service. The responsibility for the transfer of the shipments, therefore, rested upon the shippers, and the reparation asked can not be awarded to this complainant.

The supplemental complaint will be dismissed.

33 I. C. C.

No. 8036.
PACIFIC BRIDGE COMPANY
v.
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY.

Submitted November 19, 1915. Decided April 11, 1916.

Rate charged for the transportation of stone paving blocks in carloads from Wahkiakus, Wash., to Portland, Oreg., not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

A. J. Parrington for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the general contracting business at Portland, Oreg. By complaint, filed May 10, 1915, it alleges that defendant's rate of 5.75 cents per 100 pounds charged for the transportation of 16 carload shipments of stone paving blocks from Wahkiakus, Wash., to Portland was unreasonable and unjustly discriminatory to the extent that it exceeded 5 cents per 100 pounds. Reparation is asked.

The shipments aggregated 1,558,000 pounds and moved during the period from May 29 to August 2, 1913. Charges were collected in the sum of \$895.86 at a rate of 5.75 cents, minimum weight marked capacity of the car. The rate became effective January 17, 1912, and was lower than the mileage scale rate published in February, 1909. Effective August 10, 1913, after the shipments had moved, defendant published a rate of 5 cents.

The claim for reparation is based solely on an alleged agreement by defendant before complainant's shipments moved to publish a 5-cent rate on the traffic and defendant's failure to keep its promise. Defendant, in its answer, expresses willingness to make reparation on basis of the subsequently established rate.

Reparation can not be awarded by this Commission except for damage arising from violation of the act to regulate commerce. *Wood-Mosaic Flooring & Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 458. No evidence was offered to show that the rate applied was unreasonable, unjustly discriminatory, or otherwise in violation of the act. The complaint must therefore be dismissed.

No. 7434.

C. H. ROBINSON COMPANY

v.

AMERICAN EXPRESS COMPANY ET AL.

Submitted March 8, 1915. Decided April 4, 1916.

1. Rate of \$2.50 per 100 pounds maintained by the defendants for the transportation of fruits and berries in carloads from Hood River, Oreg., to Winnipeg, Brandon, and Portage la Prairie, Manitoba, found to have been unreasonable.
2. Reparation denied on shipments to Winnipeg and Brandon because complainant apparently was a stranger to defendants' transportation records relative to the shipments.

W. A. White and H. W. Bishop for complainant.

J. F. Finerty for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling fruits and berries, with its principal place of business at Grand Forks, N. Dak. By complaint, filed October 24, 1914, as amended, it alleges that the rate of \$2.50 per 100 pounds charged by defendants for the transportation of fruits and berries in carloads from Hood River, Oreg., to Winnipeg, Brandon, and Portage la Prairie, Manitoba, is unreasonable and unjustly discriminatory to the extent that it exceeds the rate of \$2 per 100 pounds applicable on like traffic to the same destinations from White Salmon, Wash. Reparation is asked on nine shipments that moved from Hood River to Winnipeg or Brandon during June, 1914.

Hood River is on the south bank of the Columbia River, 63 miles east of Portland, Oreg.; White Salmon, on the north bank of the Columbia River directly opposite. Hood River is served exclusively by the American Express Company, which does not reach White Salmon or points in Manitoba, shipments from Hood River to points in Manitoba being carried by the American Express Company to Spokane, Wash., and by the Northern Express Company or the Great Northern Express Company beyond. White Salmon is served by the Northern Express Company, which operates from that point into Manitoba.

Six of the shipments involved moved: American Express from Hood River to Spokane; Northern Express from Spokane to Winnipeg. Two shipments moved: American Express from Hood River to Spokane; Great Northern Express from Spokane to Winnipeg. One shipment moved: American Express from Hood River to Spokane; Great Northern Express to Brandon. Charges were collected on the first six shipments in the sum of \$2,347.08 on 93,883 pounds at a carload rate of \$2.50 per 100 pounds, minimum 15,000 pounds; on the next two shipments, in the sum of \$816.92 on 32,717 pounds; on the last shipment in the sum of \$385 on 15,400 pounds. The following statement offered by defendants shows the rates in effect on fruits and berries in carloads from Hood River to Winnipeg and Brandon during the period from 1912 to the time of the hearing:

To Winnipeg.		To Brandon.	
Apr. 22, 1912	\$2.25	May 22, 1912	\$2.25
Mar. 8, 1914	2.50	Feb. 1, 1914	3.60
July 2, 1914	2.25	May 23, 1914	3.10
Jan. 1, 1915	2.50	June 4, 1914	2.50
		July 2, 1914	2.25
		Jan. 1, 1915	2.50

The \$3.60 rate to Brandon effective February 1, 1914, and the \$3.10 rate effective May 23, 1914, were based on the rates to and from Spokane, but the other rates shown were joint through rates. Prior to June 20, 1914, there were no carload rates on fruits and berries from Hood River to Portage la Prairie. A carload rate of \$2.50 was established on that date, which was reduced to \$2.25 on July 2, 1914, but which was restored on January 1, 1915. The rate applicable on fruits and berries in carloads from White Salmon to the points of destination involved and other points in Manitoba when the shipments in controversy moved was \$2, which rate was applicable to Winnipeg by way of the Northern Express or by way of the Northern Express to Spokane and the Great Northern Express beyond.

Defendants state that the lower rates applicable from Hood River prior to the establishment of the rate attacked were unreasonably low; that the traffic from Hood River had not been bearing its proportionate share of expense; and that it was necessary, in attempting to recoup the losses sustained by reason of our decision *In re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, relative to less-than-carload rates, to raise rates not found unreasonable in that case to a reasonable level. The traffic from White Salmon can reach points in Manitoba over a single line and in practically all instances moves over but one line, whereas like traffic from Hood

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River to the same points must move over two lines, and entails besides switching and inspection costs at Spokane.

Subsequently to the hearing on April 20, 1915, the rate from Hood River to Brandon was reduced to \$2.25, while the rate from White Salmon for a two-line haul was increased to \$2.25. On May 22, 1915, the rate from Hood River to Winnipeg and Portage la Prairie was also reduced to \$2.25 at the same time that the rate from White Salmon for a two-line haul was increased to \$2.25. All of these rates are still in effect, as is also the Northern Express Company's \$2 rate to Winnipeg and other points in Manitoba. The rates to Chicago from Hood River and White Salmon are the same whether the hauls involved are single or multiple line. Complexity of route is also disregarded in the rates from Hood River to numerous other points both in the east and in the west and in the rates from White Salmon to numerous destinations.

We find that the rate assailed was, and for the future will be, unreasonable to the extent that it exceeded a rate of \$2 per 100 pounds; that the shipments were made as described and paid for at the rate herein found to have been unreasonable; that all of the shipments were made by the Fruit Growers' Association of Hood River, Oreg., and that the charges collected on the shipments to Winnipeg were paid by the Bright & Emery Company, the consignee, while the charges on the shipment to Brandon were paid by the Pioneer Fruit Company, the consignee at that point, and that both consignees have assigned their interest in the claims to complainant.

Conference Rule No. 362 provides as follows:

In awarding reparation the Commission will recognize an assignment by a consignor to a consignee or by a consignee to a consignor, but will not recognize an assignment to a stranger to the transportation records.

So far as appears, complainant was a stranger to defendants' transportation records relative to the shipments and therefore is not entitled to any reparation that may be due.

An appropriate order will be entered.

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No. 7575.
STATEN & KING HARDWARE COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted January 5, 1916. Decided April 11, 1916.

Complaint against the rate charged for the transportation of a carload of agricultural implements from Canton, Ohio, to Florence, Ala., held to have been abandoned.

A. P. Odom for complainant.

W. C. Wood, jr., for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

C. B. Northrup and *A. M. Bull* for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation formerly engaged in the hardware business at Florence, Ala. By complaint, filed December 14, 1914, it alleges that the rate charged by defendants for the transportation of a carload of agricultural implements from Canton, Ohio, to Florence, in January, 1912, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 4 of the act. Reparation is asked.

The claim was presented to the Commission informally May 26, 1913, but correspondence with the carriers concerned showed that the controversy could not be disposed of informally, and complainant was so notified February 18, 1914, March 13, 1914, and May 1, 1914, its attention being called to its right to file a formal complaint. Complainant failed to avail itself of this right until November 12, 1914, more than six months later. The formal complaint then presented was returned with notice to complainant that the claim apparently was barred by the statute of limitation. The complaint of December 14, 1914, was then filed.

Formal complaint was filed more than two years after the claim accrued and more than a reasonable time after notice to complainant that the claim could not be disposed of informally. The claim involved must therefore be considered to have been abandoned and the complaint be dismissed. *Rule III of the Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91; *Kenefick-Quigley-Russell Construction Co. v. Southern Ry. Co.*, 36 I. C. C., 324.

An order will be entered accordingly.

No. 8052.
HAARMANN VINEGAR & PICKLE COMPANY
v.
**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.**

Submitted December 7, 1915. Decided April 11, 1916.

Rate of 13 cents per 100 pounds charged on 18 carload shipments of cull and windfall apples from Troy, Kans., to Pawnee, Nebr., found to have been unreasonable to the extent that it exceeded a rate of $9\frac{1}{2}$ cents per 100 pounds. Reparation awarded.

E. J. McVann for complainant.

R. G. Brown for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cider, vinegar, and pickles, with its principal place of business at Omaha, Nebr. By complaint, filed May 26, 1915, it alleges that the rate of 13 cents per 100 pounds charged by defendants for the transportation of 18 carloads of cull and windfall apples from Troy, Kans., to Pawnee, Nebr., during the period from October 6, 1913, to November 15, 1913, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of $9\frac{1}{2}$ cents. Reparation is asked.

The shipments moved entirely over the line of the Chicago, Rock Island & Pacific Railway, and charges were collected at the class B rate of 13 cents, minimum weight 24,000 pounds. Complainant cites mileage scale rates of the Missouri Pacific Railway from Kansas points to Nebraska points in the immediate vicinity of Pawnee. Pawnee is 78 miles from Troy, and the Missouri Pacific scale rate for distances between 75 miles and 85 miles is $9\frac{1}{2}$ cents.

Effective November 19, 1913, defendants voluntarily established a carload commodity rate of $9\frac{1}{2}$ cents per 100 pounds, minimum weight 30,000 pounds, on cull and windfall apples from Troy to Pawnee, which rate is still in effect. Defendants state that it was their intention to publish the $9\frac{1}{2}$ -cent rate prior to the movement of the shipments involved, and that the omission was inadvertent. They admit that the rate charged was unreasonable to the extent that it exceeded the $9\frac{1}{2}$ -cent rate, which is said fully to compensate them for the

service performed, and they are willing to make reparation on that basis. The 9½-cent rate yields 24.3 mills per ton-mile.

We find that no unjust discrimination is shown, but that the rate charged was unreasonable to the extent that it exceeded 9½ cents per 100 pounds; that complainant made the shipments as described, and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, route, weight, car number and initials, rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider the entry of an order awarding reparation. As the rate herein found reasonable has been in effect for more than two years, no order for the future is necessary.

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No. 8109.
DONAHUE-STRATTON COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted November 21, 1915. Decided April 11, 1916.

Reparation awarded against initial carrier for damages due to the misrouting of a carload of oats shipped from Carpenter, Iowa, to Rib Lake, Wis.

George A. Schroeder for complainant.

C. A. Lahey and *S. MacChurkan* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in grain and grain products, with offices at Milwaukee, Wis. By complaint, filed June 23, 1915, it alleges that as a result of misrouting by the initial carrier, unreasonable charges were collected by defendants for the transportation of one carload of oats from Carpenter, Iowa, to Rib Lake, Wis., during March, 1912. Reparation is asked. The claim was presented to the Commission informally December 1, 1913.

Defendants' tariffs in effect when the shipment moved named a joint carload rate of 13.5 cents per 100 pounds plus \$2.50 per car on oats from Carpenter to Rib Lake, with routing restricted to specified junction points: Chippewa Falls and Junction City, Wis. The shipment was turned over by the forwarding carrier to the Minneapolis, St. Paul & Sault Ste. Marie Railway at Grand Rapids, Wis., and did not move through either of the junction points named. The rate applicable by the route of movement was a combination rate of 13.5 cents to Grand Rapids and 11.25 cents plus \$2.50 per car from Grand Rapids to destination. The shipment weighed 41,500 pounds. Charges were collected in the sum of \$100.03 and there appears to have been an undercharge of \$5.19.

No routing instructions were given by complainant, and it is admitted by the forwarding carrier that the shipment was misrouted through the error of its agent at Carpenter.

We find that the shipment was made as indicated; that the Chicago, Milwaukee & St. Paul Railway misrouted it; that com-

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plainant paid and bore the charges thereon and was damaged by the misrouting to the extent of the difference between the charges paid and the charges that would have accrued if the shipment had been properly routed; and that complainant is entitled to reparation in the sum of \$41.50, with interest from April 29, 1912.

An order will be entered awarding reparation.

No. 7620.

GAMBLE-ROBINSON COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted October 25, 1915. Decided April 11, 1918.

Carload of watermelons shipped from Holcomb, Mo., to Marshall, Minn., found not to have been misrouted, and complaint dismissed.

L. A. Knudsen for complainant.

Carl Giessow for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant corporation is a wholesale dealer in fruits, vegetables, and produce, with its principal place of business at Minneapolis, Minn. By complaint, filed December 26, 1914, it alleges that defendants misrouted a carload of watermelons shipped from Holcomb, Mo., to Marshall, Minn., with the result that complainant was charged an unreasonable rate. Reparation is asked.

The shipment was routed in the bill of lading "via Chicago, care Northwestern," and moved: St. Louis & San Francisco Railroad from Holcomb to Chaffee, Mo.; Chicago & Eastern Illinois Railroad, then a part of the St. Louis & San Francisco system, from Chaffee through Thebes, Ill., to Chicago; Chicago & North Western Railway beyond; a total distance of 997 miles. No joint rate applied, and charges were assessed at a combination rate of 50 cents per 100 pounds: 27 cents to Chicago, 23 cents beyond. The car could have been moved through St. Louis, Mo., and Chicago by the same car-

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riers, with the addition of the St. Louis Terminal Railroad, at a combination rate of 40 cents per 100 pounds: 13 cents to St. Louis, 27 cents beyond. The distances over the two routes are about equal.

Defendants state that the route of movement from Holcomb to Chicago was the ordinary and customary route between those points, and that service over it is more expeditious than over the route through St. Louis and the extensive terminals of the St. Louis Terminal Railroad. The St. Louis & San Francisco urges that its agent at Holcomb was not in possession of the tariffs, and did not know the rates of the Chicago & North Western. The 27-cent component of the 40-cent rate was participated in by the Chicago & Eastern Illinois, but was published in a Chicago & North Western tariff.

In Conference Ruling 214 (g) we said:

Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should cooperate with agents of carriers in avoiding misunderstandings and errors in routing and must expect to bear some responsibility in connection therewith.

We find that the shipment was not misrouted by defendants, and the complaint will be dismissed.

DANIELS, *Commissioner*, dissents.

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INVESTIGATION AND SUSPENSION DOCKET No. 708.
DANVILLE, VA., CLASS AND COMMODITY RATES.

Submitted January 3, 1916. Decided April 11, 1916.

1. Proposed increased class rates between Danville, Va., and points in the state of North Carolina found justified. Orders of suspension vacated.
2. When investigating the propriety of increased rates under suspension the Commission, in addition to the question of their reasonableness, may consider to what extent they may involve unlawful discriminations and preferences in their relation to other rates; but to withhold approval of proposed rates that are found to be reasonable and in harmony with the general interstate rate adjustment in the territory in question solely because the state rates are on a lower level would put both the carriers and the Commission under the control of state authorities in many cases involving interstate rates.

Claudian B. Northrop and Alex M. Bull for Southern Railway Company.

Charles Conradis and Arthur B. Hayes for protestant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

By the rate schedules under suspension here the Southern Railway Company proposes to increase a number of the class rates applying between Danville, in the state of Virginia, and points in the state of North Carolina on the main line of the Southern Railway intermediate to Charlotte. Increases were also proposed in the rates applying between Danville and points in the latter state lying between Greensboro and Goldsboro, and in the rates applicable between Danville and points on the so-called Ramseur, Asheboro, Wilkesboro, and Mount Airy-Sanford branches of the Southern Railway. Increases were also proposed in the rates in effect between Danville and certain points on the line of the same carrier in the state of South Carolina, and points on the line of the Carolina, Atlantic & Western Railway in both states. The proposed rates are for application in both directions, but the protest made on behalf of merchants of Danville in effect relates only to the southbound rates. The burden of justifying the new rates was assumed by the Southern Railway, hereinafter referred to as the respondent.

The respondent asserts that the protestants have misconceived both the importance and extent of the proposed increases which range generally from 1 to 3 cents per 100 pounds. In the territory involved there are 1,091 points taking class rates from Danville. The increases apply, however, to but 138 points, and of the 2,622 rates for classes 1 to P to these points only 715 rates are proposed to be increased. Some of the proposed rates relate to traffic that does not move from Danville. The respondent contends that as a whole the increases are insignificant and affect but little traffic; and that they were not intended primarily for additional revenue but merely for the purpose of harmonizing the rates in question with what is referred to of record as the respondent's North Carolina interstate mileage scale now applying in that state on traffic originating at or destined to points outside the state as to which no specific through rates are in effect. This scale of rates is hereinafter referred to as the interstate scale.

Several years ago complaint was made to the respondent carrier, by shipping interests in the state of North Carolina, that the rates then in effect from Danville to North Carolina points were in some instances lower than the interstate scale just referred to, which scale at that time applied on both interstate and state traffic. Recognizing immediately, as the respondent states, that such a rate condition could not continue, its tariff department was instructed to revise the Danville rates using the interstate scale as a minimum. It was not, however, until September 10, 1915, that the new rates, which are here under suspension and which, in a few instances, exceed the interstate scale, were filed. In the meanwhile, on October 13, 1914, the state rates in North Carolina were slightly reduced as the result of an order by the state authorities; so that, generally speaking, the rates now required under local regulations are on substantially the same level as the rates retained in effect from Danville by our suspension order. While the proposed rates from Danville to North Carolina points are therefore higher than the rates fixed by the state authorities, in but relatively few instances, with the exception of the first-class rates, do they exceed the state rates by more than 1 cent per 100 pounds. In many cases for similar distances the state and the proposed interstate rates are the same.

The present rates from Danville have been in effect for at least 12 years, and this the protestants contend raises a presumption that they are reasonable. On the other hand, the respondent asserts that it was only through neglect that for so long a period the Danville rates have been less than those applicable under the interstate scale.

In support of its contention that the proposed rates are low, comparison is made by the respondent with the state and interstate class scales maintained by the Southern Railway in South Carolina, 88 I. C. C.

Georgia, Alabama, and Tennessee. The following table is representative:

Scale.	First-class rates per 100 pounds.			
	20 miles.	50 miles.	80 miles.	160 miles.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
North Carolina interstate.....	24	36	46	59
South Carolina interstate.....	25	41	53	63
Georgia local.....	25	38	53	73
Alabama interstate.....	28	47	55	72
Tennessee local.....	22	34	46	60
Interstate local No. 3 ¹	28	44	58	72
Interstate local No. 4C ²	28	44	57	72

¹ Applies, generally speaking, between stations east of Paint Rock, N. C., and Atlanta, Ga., and north of Augusta and Savannah, Ga., on the one hand, and stations west of Paint Rock and north, west, and south of Atlanta, and west and south of Savannah, on the other hand.

² Applies, generally speaking, between points west of Paint Rock and south and west of Atlanta.

A table was also submitted showing the first-class rates of other carriers in the southeast for distances of 20, 50, 80, 120, and 180 miles, but no testimony was given respecting the transportation conditions under which these rates are applied. Some of the scales shown were established under the direction of or pressure by the state authorities and over the protest of the carriers.

Considering all the testimony adduced of record we have no difficulty in reaching the conclusion, and so finding, that the higher rates proposed by the respondent have been justified as reasonable rates for the future. This indeed is the apparent conviction of the Danville interests also. The traffic manager of the Danville Chamber of Commerce made it clear in the course of his testimony that Danville would be entirely satisfied with the proposed rates if the North Carolina state rates were raised to the same basis. He stated that Danville was interested in the resulting rate relationship rather than in the level of the rates proposed. In other words, the basis of the protest is that if these higher rates become effective while the lower state rates remain in force the result will be a discrimination against Danville and a preference in favor of competing jobbing points in North Carolina such as was condemned in *Railroad Commission of Louisiana v. St. Louis Southwestern Railway Co.*, 23 I. C. C., 31, commonly known as the *Shreveport Case*.

In pressing this point upon our attention, Danville took the position that the carriers must not only justify the reasonableness of the proposed rates but are also under the burden of justifying their general propriety; and that inasmuch as the lower state rates will create a discriminatory rate adjustment against Danville if the higher interstate rates are permitted to become effective, our

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approval of the latter rates must be withheld. On that point the respondent contended that the only question before us on the record is whether the proposed rates are just and reasonable. Both these contentions are extreme views. When investigating the propriety of proposed increased rates under a suspension order we are not limited to a consideration of their reasonableness, but may also consider their relation to other rates and what their consequence may be, and to what extent they may involve discriminations and preferences that are unlawful. *Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co.*, 30 I. C. C., 415. But to withhold our approval of rates found to be reasonable and in harmony with the general interstate adjustment in this territory, solely on the ground that when they become effective Danville will be at a disadvantage, compared with jobbing points in North Carolina, because of the lower state rates enjoyed by the latter points, would not only be in disregard of the principles of the *Shreveport Case*, *supra*, but would put both the carriers and this Commission under the control of the state authorities in many cases involving interstate rates. As heretofore explained, the difference between the present state rates and the proposed increased interstate rates is not great, and actual experience under the latter may prove that the results anticipated are more fanciful than real. In any event, should discriminations against Danville result when the higher rates have become effective, its shippers have the right under the law to bring the matter to our attention at any time by formal complaint, in the consideration of which this whole rate situation would necessarily be reviewed in the light of the evidence adduced.

It follows from what is here said that our order of suspension must be vacated, and an order will be entered accordingly.

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No. 7910.
WEST LUMBER COMPANY
v.
**MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS ET AL.**

Submitted June 7, 1915. Decided April 27, 1916.

The complainant alleges that the defendants' rates on lumber from Westville and Onalaska, Tex., to points in Oklahoma are unreasonable and unduly prejudicial. At the hearing the defendants agreed to publish the rates desired by the complainant. Such rates having been established, the complaint is dismissed.

J. M. Simmons for complainant.

J. J. Coleman and *Drew Head* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

By complaint, filed April 12, 1915, the complainant corporation alleged that the rates on lumber from Westville and Onalaska, Tex., producing points on branch lines of the Missouri, Kansas & Texas Railway of Texas, to points in Oklahoma on the lines of the Santa Fe system, were unreasonable and unduly prejudicial as compared with rates from producing points in Texas on the Santa Fe lines.

At the hearing the Santa Fe, through its representative, offered to put in the rates and routes desired by complainant. With this complainant expressed itself satisfied. The Santa Fe further agreed to maintain for two years an equality of rates between those producing points and points on its own lines. Tariffs have been filed accordingly.

The complaint has been satisfied and will be dismissed.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

4932. *STANDARD PHARMACAL Co. v. C., R. I. & P. RY. Co.* Rate on drugs from Denver, Colo., to Kalamazoo, Mich., and Chicago, Ill. No appearances for complainant. *G. W. Martin* for defendant. Dismissed for want of prosecution, February 15, 1916.

7664. *PALMER LIME & CEMENT Co. v. P. R. R. Co.* Rates on lime and lime materials from York, Pa., to New York, N. Y. *Crim & Wemple* for complainant. *F. L. Ballard, H. W. Bickel, and G. S. Patterson* for defendants. Dismissed on request of complainant, March 28, 1916.

7733. *THOELE-PHILLIPS MFG. Co. v. ERIE R. R. Co.* Rate on sheet iron from Niles, Ohio, to Florence, Ala. *H. A. Bradshaw* for complainant. No appearances for defendants. Dismissed on request of complainant, March 18, 1916.

7763. *PALMER LIME & CEMENT Co. v. P. R. R. Co.* Rates on building, chemical, and agricultural lime from York, Pa., to points in New York and New England. *Crim & Wemple* for complainant. *H. W. Bickel, G. S. Patterson, S. S. Perry, W. A. Cole, and W. Hudson* for defendants. Dismissed on request of complainant, March 28, 1916.

7815. *PALMER LIME & CEMENT Co. v. P. R. R. Co.* Interchange of freight at York, Pa. *Crim & Wemple* for complainant. *H. W. Bickel, G. S. Patterson, and D. G. Gray* for defendants. Dismissed on request of complainant, March 28, 1916.

7863. *BEAVER VALLEY POT Co. v. B. & O. R. R. Co.* Rates on broken tank blocks and broken pot shells between points in central freight association and trunk line territories. *J. F. Lent* for complainants. *L. E. Hinkle* for defendants. Dismissed on request of complainant, March 14, 1916.

7867. *PALMER LIME & CEMENT Co. v. P. R. R. Co.* Rates on lime and lime material from York, Pa., to points on the Gowanus Canal above Hamilton avenue bridge, N. Y. *Crim & Wemple* for complainant. *F. L. Ballard, H. W. Bickel, and G. S. Patterson* for defendants. Dismissed on request of complainant, March 28, 1916.

8038. *LUTCHER & MOORE LUMBER Co. v. T. & F. S. RY. Co.* Rates on rosin and products from Starks, La., to San Francisco, Cal., for export to points in the Orient. *H. S. L'Hommedieu* for complainant. *J. M. Souby, J. R. Mills, and W. E. Orgain* for defendants. Complaint satisfied. Dismissed February 15, 1916.

8073. *HOLLINGSHEAD & BLEI Co. (INC.) v. ST. L. & S. F. R. R. Co.* Overcharge on shipment of staves from Pettigrew, Ark., to Minneapolis, Minn. *P. H. Miller* for complainant. No appearance for defendants. Controversy having been adjusted by the parties, complaint dismissed March 14, 1916.

8144. *ARIZONA CORPORATION COMMISSION v. S. P. Co.* Passenger fares between points in Arizona and points in California. *A. W. Cole, A. A. Betts, and L. C. Hardy* for complainants. *J. C. Forest, J. Franklin, L. H. Chalmers, and D. L. Meyers* for defendants. Dismissed on request of complainant, February 15, 1916.

8160. *HEYSER LUMBER Co. v. ST. L. S. W. RY. Co.* Rate on gum lumber from Clio, Ark., to Cairo, Ill., reconsigned to New York, N. Y. *W. H. Lockwood* for complainant. *A. L. Burford and R. D. Coleman* for defendants. Dismissed on request of complainant, February 15, 1916.

8207. *McCLINTIC-MARSHALL Co. v. A. C. L. R. R. Co.* Rates on structural steel and contractors' outfits from Fayetteville, N. C., to Pottstown, Pa. *G. W. Corbett* for
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complainant. *F. L. Ballard, H. W. Bickel, G. S. Patterson, and R. W. Moore* for defendants. Dismissed on request of complainant, February 15, 1916.

8237. *STICKLEY (INC.) v. N. Y. C. R. R. Co.* Switching furniture at New York City. *C. M. Kessler* for complainant. *O. E. Butterfield* for defendant. Dismissed on request of complainant, March 28, 1916.

8285. *MONROE COTTON OIL Co. v. V., S. & P. RY. Co.* Rate on cotton linters from Monroe, La., to Meridian, Miss. *J. C. Smith* for complainant. *R. W. Moore* for defendant. Transferred to special docket for adjustment, April 28, 1916.

8328. *HAWKEYE OIL Co. v. M. P. RY. Co.* Rates on gasoline and refined petroleum oil from Kansas and Oklahoma points to Calmar and Cresco, Iowa. *G. Wrightman* and *C. C. Crouse* for complainant. *C. E. Hilliker* for defendants. Dismissed on request of complainant, February 15, 1916.

8370. *BERRY COAL & COKE Co. v. T. & G. R. R. Co.* Rate on coke from Chicago, Ill., to Millers, Nev. *F. H. Curran* for complainant. *L. T. Wilcox* and *W. G. Niemeyer* for defendants. Dismissed on request of complainant, March 14, 1916.

8383. *MILWAUKEE WESTERN FUEL Co. v. C. G. W. R. R. Co.* Rates on bituminous coal from Milwaukee, Wis., when from points in Kentucky and West Virginia to points on the line of defendant in Iowa and Minnesota between Dubuque, Iowa, and Red Wing, Minn. *A. Teller* for complainant. *C. C. Wright, R. H. Widdicombe, A. H. Lossow, O. W. Dynes, and Winston, Payne, Strawn & Shaw* for defendants. Dismissed on request of complainant, March 14, 1916.

8398. *HEEND v. C. & N. W. RY. Co.* Rate on rags from Clinton, Iowa, to Chicago, Ill. *M. D. Smiley* for complainant. *O. W. Dynes, R. B. Scott, C. C. Wright, R. H. Widdicombe, and W. F. Dickinson* for defendants. Dismissed on request of complainant, March 28, 1916.

8400. *HENDERSON v. F. & A. R. R. Co.* Rate on blackstrap molasses from Sterling, La., to Kansas City, Mo. *G. R. Westfeldt, jr.,* for complainant. *Denegre, Leovy & Chaffe, J. P. Bleird, D. H. Wood, H. G. Herbel, F. G. Wright, and A. G. Loddell* for defendants. Dismissed on request of complainant, March 28, 1916.

8401. *LOUIS WERNER STAVE Co. v. I. & G. N. RY. Co.* Export rate on French claret staves from West Bank, Tex., to Galveston, Tex. *Townes & Vinson* for complainant. *Wilson, Dabney & King* for defendants. Dismissed on request of complainant, March 18, 1916.

8423. *REISS COAL Co. v. C. G. W. R. R. Co.* Rates on coal from Sheboygan and Manitowoc, Wis., to Minnesota and Iowa points, originating in Kentucky and West Virginia. *J. E. Chandler* for complainant. *Winston, Payne, Strawn & Shaw, R. H. Widdicombe, and C. C. Wright* for defendants. Dismissed on request of complainant, March 28, 1916.

8431. *DERMOTT LAND & LUMBER Co. v. St. L., I. M. & S. RY. Co.* Rates on lumber from Dermott and Blissville, Ark., to points south on line of defendant. *J. P. Muller, T. M. Mehaffy, and J. H. Townshend* for complainants. *F. G. Wright and C. C. P. Rausch* for defendants. Dismissed on request of complainant, March 14, 1916.

8438. *PULP & PAPER MFRS. TRAFFIC ASSO. v. D. & N. M. RY. Co.* Rates on pulp wood from points on defendants' lines to Knife River, Minn., when destined to points in Wisconsin and Michigan. *F. J. Streckmans* for complainant. *L. C. Harris and J. T. Pearson* for defendants. Dismissed, without prejudice, on request of complainant, March 28, 1916.

8544. *GENERAL CONSTRUCTION Co. v. C., M. & St. P. RY. Co.* Rates on sawed stone from Milwaukee, Wis., to Munising, Mich. *F. M. Elkinton* for complainant. *O. W. Dynes, S. R. Lewis, and H. A. St. John* for defendants. Dismissed on request of complainant, March 28, 1916.

8556. *REISS COAL Co. v. C. G. W. R. R. Co.* Rates on coal from Waukegan, Ill., to Red Wing, Minn., and all intermediate points, Durango, Iowa, to Trout Brook,

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Minn. J. E. Chandler for complainant. *Winston, Payne, Strawn & Shaw* and *W. L. Louis* for defendants. Dismissed on request of complainant, March 28, 1916.

8588. *ATLANTIC REFINING Co. v. P. R. R. Co.* Rate on petroleum fuel oil in tank cars from Philadelphia, Pa., to Roebbling and Trenton, N. J. *E. H. Porter* for complainant. No appearance for defendant. Matter in controversy disposed of on the Commission's special docket. Dismissed, March 14, 1916.

8605. *CUMBERLAND COUNTY POWER & LIGHT Co. v. EASTERN STEAMSHIP CORPORATION.* The establishment of through routes and joint rates between points on complainants lines and Boston, Mass., and New York, N. Y., via Bath, Gardiner, and Portland, Me. *S. R. Bowen* and *W. M. Bradley* for complainants. *R. W. Wells* for interveners. *G. W. Sterling* for defendants. Dismissed on motion of complainant, April 27, 1916.

8649. *Good v. G. N. Ry. Co.* Rate on pine lumber from Wellesly and Springston, Idaho, to Northville and Powers Lake, N. Dak. *E. M. Fronk* for complainant. *Graves, Kizer & Graves, J. F. Finnerty, H. A. Scandrett, and A. C. Spencer* for defendants. Dismissed on request of complainant, March 28, 1916.

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REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

6829. *BALLOU & WRIGHT v. N. Y., N. H. & H. R. R. Co. ET AL.*, February 15, 1916. Reparation for \$971.74, on account of unreasonable charges collected on shipments of motorcycles from Armory, Mass., to Portland, Oreg., and Seattle, Wash.

6797. *STANDARD ROOFING Co. ET AL. v. M., K. & T. Ry. Co. ET AL.*, February 15, 1916. Reparation for \$1,140.23 on shipments of roofing paper and building paper from East St. Louis, Ill., to Muskogee and Tulsa, Okla., on account of unreasonable rates.

6764 (Sub-No. 2) *CUDAHY PACKING Co. v. St. J. & G. I. Ry. Co. ET AL.*, February 15, 1916. Reparation for \$19.04 to Cudahy Packing Co. and \$206.71 to Swift & Co., intervener, on account of unreasonable charges collected on packing-house products in mixed carloads with fresh meat from St. Joseph, Mo., and Kansas City, Kans., to Salt Lake City, Utah.

7776. *LANDER COUNTY LIVE STOCK Co. v. S. P. Co. ET AL.*, February 15, 1916. Reparation for \$1,770.72, on shipments of range or feeding cattle from Calorets, Cal., to Beowawe, Nev., on account of unreasonable rates.

5909. *SUNDERLAND BROS. Co. ET AL. v. A., T. & S. F. Ry. Co. ET AL.*, February 15, 1916. Reparation for \$534.53 to Morton Salt Co., \$9.25 to Sunderland Bros. Co., and \$107.68 to W. R. Brooks Coal Co., trading as Interstate Salt Co., intervener, on account of unreasonable rates on salt from Kansas points to Nebraska, Colorado, and other states.

5215. *CHATTANOOGA SEWER PIPE & FIRE BRICK Co. v. A. G. S. R. R. Co. ET AL.*, February 15, 1916. Reparation for \$99.36 on shipments of sewer pipe from Birmingham, Ala., to Lake Charles, La., on account of unreasonable rates.

7185. *SWIFT & Co. v. L. & N. R. R. Co.*, February 15, 1916. Reparation for \$73.20 on shipments of fertilizer from New Orleans, La., originating at Harvey, La., to Mous, Ala., on account of unreasonable rates.

6659. *NEW ENGLAND FISH Co. v. C., M. & St. P. Ry. Co. ET AL.*, February 15, 1916. Reparation for \$2,232, on account of unreasonable charges collected on shipments of fresh fish from Seattle, Wash., to Philadelphia, Pa., and Chicago, Ill.

7462. *MENGEL & BRO. Co. v. B. & O. R. R. Co. ET AL.*, February 15, 1916. Reparation for \$716.29 on shipments of Spanish cedar logs from Louisville, Ky., to Philadelphia, Pa., on account of unreasonable rates.

7403. *FORT WORTH ELEVATORS Co. v. A., T. & S. F. Ry. Co. ET AL.*, February 15, 1916. Reparation for \$172.39, on account of unreasonable rates on shipments of alfalfa hay from stations in Colorado to Fort Worth, Tex., and there reconsigned to various points in Texas.

6069. *RUSSELL CREAMERY Co. v. G. N. EXPRESS Co.*, February 15, 1916. Reparation for \$331.13 on shipments of milk from Braham and Askov, Minn., to Superior, Wis., on account of unreasonable rates.

6718 and 6718 (Sub-No. 1). *OAKLAND MOTOR CAR Co. OF MICH. v. G. T. Ry. Co. OF CANADA ET AL.*, February 15, 1916. Reparation for \$456.88, on account of unlawful charges collected on shipments of automobiles from Pontiac, Mich., to Whitefield, N. H., and New York, N. Y.

NOTE.—The amount of reparation awarded in above cases aggregates \$8,841.15.

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- Apples, cull. Troy, Kans., to Pawnee, Nebr., 737.
- Apples, dried. Rogersville, Tenn., to Bristol, Va., reconsigned to Chicago, Ill., 565.
- Apples, windfall. Troy, Kans., to Pawnee, Nebr., 737.
- Automobile gear frame parts. North Milwaukee, Wis., to St. Louis, Mo., 503.
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- Bananas. New Orleans, La., to Texarkana, Ark.-Tex., 55.
- Bars, steel frame automobile gear. North Milwaukee, Wis., to St. Louis, Mo., 503.
- Beef, dressed, New York, N. Y., and other Atlantic seaboard cities to St. Louis and East St. Louis, 51.
- Beer. San Diego, Cal., to El Paso, Tex., and Albuquerque and other points in New Mexico and Arizona, 171.
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- Benzol. Tank-car tests, 65.
- Berries. Hood River, Oreg., to Winnipeg, Brandon, and Portage la Prairie, Manitoba, 733.
- Berries, canned. Puyallup, Wash., to Salt Lake City, Utah, 701.
- Bisulphide, carbon. Tank-car tests, 65.
- Blinds. Wisconsin, Iowa, and Illinois to C. F. A. and trunk-line territories, 105.
- Blocks, paving. Canton, Ohio, to Long Branch, N. J., 345.
- Blocks, stone paving. Wahkiakus, Wash., to Portland, Oreg., 732.
- Board, paper. Official classification territory, 120.
- Board, tag. Trunk-line territory to C. F. A. territory, 120 (147).
- Bolts, wood. Memphis, Tenn., from Arkansas, Louisiana, and Oklahoma, 432.
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- Brick. Canton, Ohio, to Long Branch, N. J., 345.
- Brick, fire. Louisiana from Malvern and Perla, Ark., 249.
- Bricks, paving. Boynton, Okla., to Denison, Paris, and Dallas, Tex., 355.
- Buggy bodies. St. Louis, Mo., to Marshalltown, Iowa, 634.
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- Cabbage:
- Norfolk, Va., to New York, N. Y., 252.
- Spokane, Wash., from Placencia and Colma, Cal., 209.
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- Cans, tin. Dunnage allowances, 618.
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Class rates:

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- Los Angeles, Cal., from Idaho and Utah, 367.
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- Philadelphia, Pa. Reconsignment services, 551.
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- Lumber, cypress. Plaquemine, La., to Washington Court House, Ohio, 539.
- Lumber, fir. Washington to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn., 399.
- Lumber, gum. Charleston, Miss., to Mobile, Ala., Pensacola, Fla., and Gulfport, Miss., for export, 278.
- Lumber, hardwood. Charleston, Miss., to Mobile, Ala., and Pensacola, Fla., 278.
- Lumber, oak:
 Charleston, Miss., to Mobile, Ala., and Pensacola, Fla., 278.
 Jackson, Tenn., to Preston, Ont., 357.
- Lumber, pine:
 Drake, S. C., to McDonoughs, N. J., 702.
 Smith, La., to Cobourg, Ont., 579.
- Lumber products. Chicago territory from St. Paul, Minneapolis, Minnesota Transfer, Duluth, and Stillwater, Minn., and Ashland, Wis., 370.
- Lumber, yellow-pine:
 Akron, Ala., to Richelieu, Quebec, 361.
 Arkansas, Louisiana, and Texas to Nebraska and Kansas, 330.
 Meehan Junction, Miss., to Chicago, Ill., 117.
- Machinery. Chicago, Ill., to New York, N. Y., 569.
- Machinery, mining. Willard, Ky., to Murfreesboro, Ark., 573.
- Marble, dressed or sawed. Rutland, Vt., to St. Paul territory, Minn., 12.
- Marble, rough. Rutland, Vt., to St. Paul territory, Minn., 12.
- Matches. Duluth, Minn., to Little Rock, Hot Springs, Fort Smith, and other Arkansas points, 103.
- Meal, alfalfa. Kearney, Nebr., to East Omaha, Nebr., 351.
- Meal, corn oil. Indianapolis, Ind., to Hammond, Ind., destined to Pennsylvania, New York, New Jersey, and New England, 611.
- Meal, cottonseed:
 Meridian, Miss., to C. F. A., trunk line and western trunk line territories, and to points on and south of the Ohio and Potomac Rivers and east of the Mississippi River, 478.
 Texas to Port Arthur, Tex., for export, 378.
- Meats, fresh:
 Central freight association territory, 665.
 Mason City, Iowa, to Arkansas, Louisiana, and Texas, 223.
 Western classification territory, 94.
- Melons:
 Colorado and Utah to various destinations; refrigeration, 82.
 Monson, Cal., to Spokane, Wash., 209.
- Milk, condensed and evaporated. Classification ratings in C. F. A., trunk line, and New England territories, 441.
- Mineral water. Sheboygan, Wis., to Memphis, Tenn., 491.
- Moldings, wood. New Orleans, La., to Cincinnati, Ohio, 707.
- Motorcycle. Corpus Christi, Tex., to Ottumwa, Iowa, 340.
- Mousetraps. Ottumwa, Iowa, to St. Joseph, Mo., and Atchison, Kans., 343.
- Oats:
 Carpenter, Iowa, to Rib Lake, Wis., 739.
 Heaton, N. Dak., to Minneapolis, Minn., reconsigned to Osceola, Wis., 335.
 Kansas City, Mo., from South Dakota, Minnesota, and Iowa, reshipped to points in Kansas, 682.
 Milburn, Okla., to Aubrey, Ark., 549.
 Omaha and South Omaha, Nebr., to Douglas and other Arizona points, 687.

Oil cake, corn. Indianapolis, Ind., to Hammond, Ind., destined to Pennsylvania, New York, New Jersey, and New England, 611.

Oil, crude petroleum. Cushing, Okla., to Joplin, Mo., 358.

Oil, petroleum. Cowley, Wyo., to Highwood and Coffee Creek, Mont., 221.

Oil, petroleum fuel. Chelsea, Okla., to Mears Mines, Mo., 28.

Oranges:

Jacksonville, Fla., to Billings, Butte, Helena, and Great Falls, Mont., 187.

New Orleans, La., to Texarkana, Ark.-Tex., 55.

Packing-house products:

Mason City, Iowa, to Arkansas, Louisiana, and Texas, 228.

Western classification territory, 94.

Packing-house products, loose and packed. Central freight association territory, 665.

Paper:

Michigan to C. F. A., western trunk line, trans-Missouri, and Mississippi Valley territories, Chicago, Milwaukee, Denver, New Orleans, and other points in Louisiana and Oklahoma, 517.

New England to C. F. A. territory, 120.

Portland, Oreg. Loading charges from dock, for transshipment, 231.

Wisconsin to Indiana, Michigan, Ohio, Kentucky, West Virginia, Pennsylvania, and New York, 120.

Paper, black register and wall. Official classification territory, 120 (147).

Paper, blotting. Central freight association territory from trunk line territory, 120 (147).

Paper, building. Official classification territory, 120.

Paper, newsprint:

Alexandria, Ind., and Cheboygan, Mich., to eastern points, 120.

New England and northern New York to C. F. A. territory, 120.

Woodland, Me., to New York, N. Y., 213.

Paper, roofing. Official classification territory, 120.

Paper, surface-coated printing. Saugerties, N. Y., to official classification territory, 151.

Paper, wrapping:

Trunk line territory to C. F. A. territory, 120 (146).

Woodland, Me., to New York, N. Y., 213.

Peaches. Henderson and Craft, Tex., to Emporia, Kans., and Kansas City, Mo., diverted in transit at Fort Worth, Tex., to Holdrege, Nebr., 216.

Petroleum products:

Cowley, Wyo., to Highwood and Coffee Creek, Mont., 221.

Tank car tests, 65.

Petroleum, refined:

Freemansburg, Pa., to Constable Hook, N. J., 725.

Superior, Nebr., from Coffeyville and Niotaze, Kans., 591.

Pickles. Chicago, Ill., to New York, N. Y., 569.

Pineapples. New Orleans, La., to Texarkana, Ark.-Tex., 55.

Pipe, cast-iron. Charlotte, N. C., to Pacific coast terminals, 183.

Pipe, iron. Union City, Ind., to Ohio and Indiana. Length and weight restrictions, 627.

Pipe, riveted iron. In re Minimum Charges on Articles Too Long or Too Bulky to be Loaded Through the Side Door of Cars, 257.

Pipe, sewer. Texarkana, Tex., to Brownsville, Tex., 341.

Pipe, wrought-iron. Wheeling, W. Va., to Wasco and other California points, 264.

Plaster, cement. Acme, Tex., to Oklahoma, Kansas, Missouri, Illinois, Iowa, and Colorado, 639.

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Poles, telegraph. In re Minimum Charges on Articles Too Long or Too Bulky to be Loaded Through the Side Door of Cars, 257.

Posts. Remer, Minn., to Benld, Ill., 338.

Potatoes:

East St. Louis, Ill., from Louisiana and Texas, destined to points north of the Ohio River and east of Illinois-Indiana state line; minimum weight, 101.

Norfolk, Va., to New York, N. Y., 252.

Virginia to Philadelphia, Pa., and New York, N. Y., 467.

Wisconsin to Missouri and Kansas, 87.

Potatoes, seed. Seeley Creek, N. Y., to Lemon City, Fla., 583.

Pulleys, cam shaft. In re Minimum Charges on Articles Too Long or Too Bulky to be Loaded Through the Side Door of Cars, 257.

Pulp, wood. Wisconsin to Indiana, Michigan, Ohio, Kentucky, West Virginia, Pennsylvania, and New York, 120 (150).

Rails, old steel. Pennsylvania from Maine and New Hampshire, 719.

Retorts, fire-clay, Altoona, Kans., to Joplin, Mo., 365.

Rolls, iron. Lyons, Iowa, to St. Louis, Mo., 542.

Rosin. Snow Hill, N. C., to New York, N. Y., 535.

Rye. Western classification territory; minimum weight, 94.

Salt, rock. Louisiana to Fort Worth and North Fort Worth, Tex., 242.

Sand. Lake Erie ports to C. F. A. territory, 196.

Sand, glass. Ottawa, Ill., to Columbus, Mount Vernon, Lancaster, Zanesville, and Barnesville, Ohio, 331.

Sand, moulding:

St. Paul, Minn., to Fargo, N. Dak., 693.

Valparaiso, Nickel, Ind., to Chicago, Ill., 723.

Sash. Wisconsin, Iowa, and Illinois to C. F. A. and trunk-line territories, 105.

Second-hand articles. Willard, Ky., to Murfreesboro, Ark., 573.

Shafting. In re Minimum Charges on Articles Too Long or Too Bulky to be Loaded Through the Side Door of Cars, 257.

Shingles, cedar. Washington to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn., 399.

Siding, kiln-dried cedar. Washington to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn., 399.

Silos. In re Minimum Charges on Articles Too Long or Too Bulky to be Loaded Through the Side Door of Cars, 257.

Sirup, beet-sugar refuse:

Kansas City, Mo., from Colorado and Nebraska, 307.

Omaha, Nebr., from Colorado, and Billings, Mont., and Scottsbluff, Nebr., 245.

Slabs, zinc. Chicago, Ill., to Milwaukee, Wis., 631.

Soda ash. Oklahoma City, Okla., from St. Louis, Chicago, Detroit, Wyandotte, Mich., Hutchinson, Kans., Indiana, and Ohio, 392.

Soda, caustic. Oklahoma City, Okla., from St. Louis, Chicago, Detroit, Wyandotte, Mich., Solvay, N. Y., Indiana, and Ohio, 392.

Soda, silicate of. Oklahoma City, Okla., from St. Louis, Chicago, Grasselli, and Fortville, Ind., Michigan, and Ohio, 392.

Speltz. Heaton, N. Dak., to Minneapolis, Minn., reconsigned to Osceola, Wis., 335.

Spinach. Norfolk, Va., to New York, N. Y., 252.

Staves, gum, and oak. Broken Bow, Okla., to San Francisco and Fresno, Cal., and other points, 203.

Steel articles:

In re Minimum Charges on Articles Too Long or Too Bulky to be Loaded Through the Side Door of Cars, 257.

Steel articles—Continued.

North Pacific coast terminals to Spokane and other points in Washington, Oregon, and Idaho, 545.

Pacific coast ports from Pittsburgh and Cincinnati territories, 237.

Steel, bar. Jackson, Mich., from Pittsburgh, Reading, Nicetown, and Steelton, Pa., and Youngstown, Ohio, 233.

Steel, sheet. Spokane, Wash., and north Pacific coast terminals from eastern territory, 669.

Stone, building. Bedford, Ind., to Muskogee, Okla., 485.

Stone, crushed:

Graysville, Ga., to Chattanooga, Tenn., and Jacksonville, and other points in Florida and Georgia, 614.

Illinois to Indiana and Illinois, 389.

Storage batteries. Philadelphia, Pa., to Detroit, Mich., 571.

Straw:

Baltimore, Md. Storage, 326.

Philadelphia, Pa. Reconsignment services, 551.

Strawberries. Norfolk, Va., to New York, N. Y., 252.

Strawboard. Official classification territory, 120.

Tag board. Central freight association territory from trunk line territory, 120 (147).

Tanks. Minimum charges on, 257.

Ties, oak cross. Nashville, Tenn., from Cumberland Furnace and Sylvia, Tenn., 689.

Tile, floor and wall. Indianapolis, Ind., to Belle Plaine, Minn., 363.

Tin, scrap. Elizabethport, N. J. Storage, 349.

Vegetables:

Norfolk, Va., to New York, N. Y., 252.

St. Louis, Mo., and East St. Louis, Ill., to various destinations; transportation facilities, 487.

San Francisco, Cal., to Spokane, Wash., 209.

Virginia to Philadelphia and New York, 467.

Water, mineral. Sheboygan, Wis., to Memphis, Tenn., 491.

Watermelons. Holcomb, Mo., to Marshall, Minn., 305.

Wheat:

Arkansas to Memphis, Tenn., 94.

Hardin, Mont., to Minneapolis, Minn., 305.

Oklahoma to New Orleans, La., 33.

Western classification territory. Minimum weight, 94.

Wheels, wooden motor truck. Los Angeles, Cal., from Newark, N. J., and Lansing and Jackson, Mich., 292.

Wire fence. See Fence.

Wood, spruce pulp. Rothschild, Wis., from Big Falls and Farley, Wis., 497.

Wooden building material. Oklahoma City, Okla., to Corpus Christi, and other Texas points, 276.

Zinc slabs. Chicago, Ill., to Milwaukee, Wis., 631.

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TABLE OF LOCALITIES.

- Acmar, Ala., to Florida. Coal, 711.
- Acme, Tex., to Oklahoma, Kansas, Missouri, Illinois, Iowa, and Colorado. Cement plaster, 639.
- Adrian, Mich., to Menard, Tex. Wire fence, 721.
- Akron, Ala., to Richelieu, Quebec. Yellow-pine lumber, 361.
- Alabama to Meridian, Miss. Cottonseed cake, 478.
- Alabama to Mount Pleasant, Tenn. Fertilizer, 602.
- Albuquerque, N. Mex., from Chicago, Ill. Passenger fares, 294.
- Albuquerque, N. Mex., from San Diego, Cal. Beer, 171.
- Alexandria, Ind., to eastern points. Newsprint paper, 120.
- Alexandria, La., from Malvern and Parla, Ark. Fire brick, 249.
- Alexandria, La., from Mason City, Iowa. Packing-house products and fresh meats, 228.
- Alexandria, La., from Minneapolis, Minn. Flour, 290.
- Alexandria, Va., from Kanawha and New River districts, W. Va. Bituminous coal; fourth section, 310.
- Algiers, La., from Oklahoma. Wheat, 33.
- Altoona, Kans., to Joplin, Mo. Fire-clay retorts, 365.
- Anderson, Ala., from Mount Pleasant, Tenn. Fertilizer, 602.
- Anderson, S. C., from Shore, Ga. Lumber, 301.
- Ansley, Miss., to New Orleans, La. Logs, 299.
- Anton, Ky., from Mount Pleasant, Tenn. Fertilizer, 602.
- Apalachicola, Fla., from Birmingham district, Ala. Coal, 711.
- Arizona from Omaha and South Omaha, Nebr. Oats and corn, 687.
- Arizona from San Diego, Cal. Beer, 171.
- Arkansas from Duluth, Minn. Matches, 103.
- Arkansas from Mason City, Iowa. Packing-house products and fresh meats, 228.
- Arkansas to Memphis, Tenn. Hardwood logs and bolts, 432.
- Arkansas to Memphis, Tenn. Wheat and corn, 94.
- Arkansas to Meridian, Miss. Cottonseed cake, 478.
- Arkansas to Nebraska and Kansas. Yellow-pine lumber, 330.
- Arkansas to Onalaska, Tex. Coal, 401.
- Arnott, Wis., to Kansas City and other points in Missouri and Kansas. Potatoes, 87.
- Ashland, Oreg., from Mococo, Cal. Fertilizer, 530.
- Ashland, Wis., to Chicago and Chicago rate points. Lumber and lumber products, 370.
- Ashton, Iowa, to Council Bluffs, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo. Corn, 616.
- Astoria Oreg., from and to points in the inland empire territory. Class and commodity rates, 16.
- Atchison, Kans., from Ottumwa, Iowa. Mousetraps, 343.
- Atlanta, Ga., from Chattanooga, Tenn. Rough sectional boiler castings, 685.
- Atlanta, Ga., from Graysville, Ga. Crushed stone, 614.
- Atlantic City, N. J., from Hertford, N. C., reconsigned to Tom's River, N. J. Lumber, 709.
- Atlantic seaboard from C. F. A. territory. Printing paper, 120.
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- Atlantic seaboard cities to St. Louis, Mo., and East St. Louis, Ill. Dressed beef, 51.
 Aubrey, Ark., from Milburn, Okla., and Council Bluffs, Iowa. Oats and corn chops, 549.
 Avery, La., to Fort Worth and North Fort Worth, Tex. Rock salt, 242.
 Baden, Ga., to Columbia, S. C. Lumber, 301.
 Baltimore, Md. Free storage rules, 326.
 Baltimore, Md., to Birmingham, Ala. Class rates, 516.
 Baltimore, Md., from Malvern and Mansfield, Pa., Bridgeton, N. J., Enosburg Falls, Vt., and other points. Condensed and evaporated milk, 441.
 Baltimore, Md., from Midway, Ky. Distillers' dried grain, 715.
 Baltimore, Md., to Washington, D. C. Commodity rates, 593.
 Barnesville, Ohio, from Ottawa, Ill. Glass sand, 331.
 Beaumont, Tex., from New Orleans, La. Class and commodity rates, 1, 11.
 Beaver Brook colliery, Pa., to Elizabethport, N. J., for transshipment. Anthracite coal, 206.
 Bedford, Ind., to Muskogee, Okla. Building stone, 485.
 Belle Plaine, Minn., from Indianapolis, Ind. Wall and floor tile, 363.
 Benld, Minn., from Remer, Minn. Posts, 333.
 Big Falls, Minn., to Rothschild, Wis. Spruce pulp wood, 497.
 Big Horn Wye (Hardin), Mont., from North Fort Worth, Tex., branded at Clearmont, Wyo. Cattle, 118.
 Billings, Mont., from Jacksonville, Fla. Grapefruit and oranges, 187.
 Billings, Mont., to Omaha, Nebr. Refuse beet-sugar sirup, 245.
 Birmingham, Ala., to Florida. Coal, 711.
 Birmingham, Ala., from New York, Philadelphia, and Baltimore. Class rates, 516.
 Birmingham district, Ala., to Florida. Coal, 711.
 Black Rock, N. Y., to Portland, Ore. Motor delivery cars, 112.
 Boaz, Ala., from Mount Pleasant, Tenn. Fertilizer, 602.
 Bonanza, Ark., to Onalaska, Tex. Coal, 401.
 Bonners Ferry, Idaho, to Montana, North Dakota, and Minnesota. Lumber, 268.
 Boston, Mass. Terminal switching, 643.
 Boston, Mass., from Kalamazoo, Mich. Printing paper, 120.
 Boston, Mass., from Malvern and Mansfield, Pa., Bridgeton, N. J., and Enosburg Falls, Vt., reshipped to various points in C. F. A. territory. Condensed and evaporated milk, 441.
 Boston, Mass., to and from New York, N. Y. Class and commodity rates, 61.
 Boston, Mass., from St. Paul, Minneapolis, and Minnesota Transfer, Minn. Green salted hides, 194.
 Bowie, La., from Ludivine, La., for reshipment. Lumber, 625.
 Boynton, Okla., to Denison, Paris, and Dallas, Tex. Paving bricks, 355.
 Brandon, Manitoba, from Hood River, Ore. Fruits and berries, 733.
 Bridgeton, N. J., to C. F. A. and New England territories. Condensed and evaporated milk, 441.
 Bristol, Va., from Rogersville, Tenn., reconsigned to Chicago, Ill. Dried apples, 565.
 Broken Bow, Okla., to San Francisco and Fresno, Cal. Oak and gum staves, 203.
 Brownsville, Tex., from Texarkana, Tex. Sewer pipe, 341.
 Brush, Colo., to Kansas City, Mo. Refuse sirup, 307.
 Brush, Colo., to Omaha, Nebr. Beet-sugar refuse sirup, 245.
 Buffalo, N. Y. Dockage and handling charges on flour, 729.
 Buffalo, N. Y., from East St. Louis, Ill. Fresh meats and packing-house products, 665.
 Buffalo, N. Y., from Michigan. Paper, 517.
 Buffalo, N. Y., to Portland, Ore. Motor delivery cars, 112.

- Burkburnett, Tex., from Witteville, Okla. Lump coal, 585.
- Butte, Mont., from Jacksonville, Fla. Oranges and grapefruit, 187.
- California from Broken Bow, Okla. Oak and gum staves, 203.
- California from Idaho and Utah. Grain and products, 367.
- California from Mohrland and Hiawatha, Utah. Soft coal, 474.
- California from Wheeling, W. Va. Wrought-iron pipe, 264.
- California to Wisconsin, Iowa, and Illinois. Lumber, 105.
- Camden, Ark., from Mason City, Iowa. Packing-house products and fresh meats, 228.
- Camden, N. J., to Jacksonville, Fla. Feed-water heater, 499.
- Cameo, Colo., to Wyoming, South Dakota, Nebraska, and Kansas. Bituminous coal, 174.
- Canada from Colorado and Utah. Melons, 62.
- Canada to Newport, Vt. Customs duties on traffic, 636.
- Canton, Ohio, to Florence, Ala. Agricultural implements, 736.
- Canton, Ohio, to Long Branch, N. J. Paving blocks, 345.
- Capeville, Va., to Philadelphia and New York. Potatoes, 467.
- Carpenter, Iowa, to Rib Lake, Wis. Oats, 739.
- Cedar Grove, Ala., from Mount Pleasant, Tenn. Fertilizer, 602.
- Cedar Grove, La., from Malvern and Perla, Ark. Fire brick, 249.
- Central freight association territory. Fresh meat and packing-house product rates, 665.
- Central freight association territory from Lake Erie ports. Sand and gravel, 196.
- Central freight association territory from Meridian, Miss. Cottonseed meal, 478.
- Central freight association territory from Michigan. Paper, 517.
- Central freight association territory from New England, northern New York, and other points. News print paper, 120.
- Central freight association territory from Pennsylvania, New England, and Bridgeton, N. J. Condensed and evaporated milk, 441.
- Central freight association territory to various destinations. Minimum weight on flue lining, 328.
- Central freight association territory from Wisconsin, Iowa, and Illinois. Sash, doors, and blinds, 105.
- Central Point, Oreg., from Mococo, Cal. Fertilizer, 530.
- Chaffee, Mo., to Thebes, Ill. Coiled elm hoops, 482.
- Charleston, Miss., to Mobile, Ala., and Pensacola, Fla. Hardwood lumber, 278.
- Charleston, S. C., from eastern port cities and New England, destined to Charlotte, N. C. Class and commodity rates, 405.
- Charlotte, N. C., from eastern port cities and New England, via Charleston, S. C. Class and commodity rates, 405.
- Charlotte, N. C., to Pacific coast terminals. Cast-iron pipe, 183.
- Chattanooga, Tenn., to Atlanta, Ga. Rough sectional boiler castings, 685.
- Chattanooga, Tenn., from Graysville, Ga. Crushed stone, 614.
- Cheboygan, Mich., to eastern territory. News print paper, 120.
- Chelsea, Okla., to Mears Mines, Mo. Petroleum fuel oil, 28.
- Chesapeake Bay points from Pennsylvania and Maryland mines. Bituminous coal, 658.
- Chicago, Ill., to Albuquerque, N. Mex., and Williams, Ariz. Passenger fares, 294.
- Chicago, Ill., to C. F. A. territory. Fresh meats and packing-house products, 665.
- Chicago, Ill., from Colorado and Utah. Melons, 62.
- Chicago, Ill., from Coxton, Pa., reconsigned to Lizton, Ind. Anthracite coal, 495.
- Chicago, Ill., from Knoxo, Miss. Lumber, 490.
- Chicago, Ill., from Meehan Junction, Miss. Yellow-pine lumber, 117.
- Chicago, Ill., from Michigan. Paper, 517.
- Chicago, Ill., to Milwaukee, Wis. Scrap copper, scrap brass, and slab zinc, 631.

- Chicago, Ill., to New York, N. Y. Pickles and machinery, 569.
- Chicago, Ill., to and from Ohio River points. Class and commodity rates, 411.
- Chicago, Ill., to Oklahoma City, Okla. Soda ash, caustic soda, and silicate of soda, 392.
- Chicago, Ill., from Rogersville, Tenn., reconsigned at Bristol, Va. Dried apples, 565.
- Chicago, Ill., from St. Paul, Minneapolis, Minnesota Transfer, Duluth, and Stillwater, Minn., and Ashland, Wis. Lumber and products, 370.
- Chicago, Ill., to San Francisco, Los Angeles, Portland, and Seattle. Carburetors, 288.
- Chicago, Ill., from Swink, Colo. Cantaloupes, 115.
- Chicago, Ill., to Twin Falls, Idaho. Blacksmith coal, 347.
- Chicago, Ill., from Valparaiso, Nickel, Ind. Molding sand, 723.
- Chicago, Ill., from Weirgor, Wis. Lumber, 598.
- Chicago territory from St. Paul, Minneapolis, Minnesota Transfer, Duluth, and Stillwater, Minn., and Ashland, Wis. Lumber and products, 370.
- Cincinnati, Ohio, to Eastman, Ga. Class and commodity rates, 672.
- Cincinnati, Ohio, from Kentucky and Tennessee mines. Coal, 704.
- Cincinnati, Ohio, from Michigan. Paper, 517.
- Cincinnati, Ohio, from New Orleans, La. Wood moldings, 707.
- Cincinnati territory to Pacific coast ports. Iron and steel articles, 237.
- Clark's Fork, Idaho, from Tuscara, Idaho. Lumber, 633.
- Clearfield district, Pa., to Chesapeake Bay and Delaware Bay points. Bituminous coal, 658.
- Clearmont, Wyo., from North Fort Worth, Tex., destined to Big Horn Wye (Hardin), Mont. Cattle, 118.
- Cleveland, Ohio, to C. F. A. territory. Gravel and Sand, 196.
- Clifton Heights, Pa., to St. Louis, Mo., destined to Jefferson City, Mo. Cotton piece goods, 537.
- Coalmont, Colo., to Wyoming, Nebraska, Colorado, and Kansas. Soft coal, 73.
- Coatesville, Pa., from Portland and points in Maine and New Hampshire. Scrap iron and old steel rails, 719.
- Cobourg, Ont., from Smith, La. Pine lumber, 579.
- Coffee Creek, Mont., from Cowley, Wyo. Petroleum oil and products, 221.
- Coffeyville, Kans., to Superior, Nebr. Refined petroleum, 591.
- Coldwater, Kans., from Walsenburg, Colo. Nut coal, 690.
- Coleraine colliery, Pa., to Elizabethport, N. J., for transshipment. Anthracite coal, 206.
- Colma, Cal., to Spokane, Wash. Cabbage, 209.
- Colorado from Acme, Tex. Cement plaster, 639.
- Colorado from Coalmont, Colo. Soft coal, 73.
- Colorado from Kansas and Oklahoma. Broom corn, 94.
- Colorado to Kansas City, Mo. Refuse sirup, 307.
- Colorado to Omaha, Nebr. Refuse beet-sugar sirup, 245.
- Colorado to various destinations and Canada. Melons, 62.
- Colorado common points from Michigan. Paper, 517.
- Columbia, S. C., from Baden, Ga. Lumber, 301.
- Columbus, Ohio, from Ottawa, Ill. Glass sand, 331.
- Constable Hook, N. J., from Freemansburg, Pa. Refined petroleum, 725.
- Coopersville, Mich., from Milwaukee, Wis. Passenger fares, 93.
- Corbin, B. C., to Spokane, Wash. Slack coal, 622.
- Corinth, Miss., from Mount Pleasant, Tenn. Fertilizer, 602.
- Corpus Christi, Tex., from Oklahoma City, Okla. Wooden building material, 276.
- Corpus Christi, Tex., to Ottumwa, Iowa. Motorcycle, 340.
- Council Bluffs, Iowa, to Aubrey, Ark. Corn chops, 549.
- Council Bluffs, Iowa, from Sheldon, Ashton, and Hoopers, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo. Corn, 616.

- Cowley, Wyo., to Highwood and Coffee Creek, Mont. Petroleum oil and products, 221.
- Coxton, Pa., to Lizton, Ind., reconsigned to Chicago, Ill. Anthracite coal, 495.
- Craft, Tex., to Emporia, Kans., and Kansas City, Mo., diverted in transit at Fort Worth, Tex., to Holdrege, Nebr. Peaches, 216.
- Crawford, Nebr., from Issaquah and Van Zandt, Wash. Fir lumber, cedar shingles, and kiln-dried cedar siding, 399.
- Culpeper, Va., from Kanawha and New River districts, W. Va. Bituminous coal, 310.
- Cumberland, Md., to Chesapeake Bay and Delaware Bay points. Bituminous coal, 658.
- Cumberland Furnace, Tenn., to Nashville, Tenn. Oak crossties, 689.
- Cushing, Okla., to Joplin, Mo. Crude petroleum oil, 358.
- Custer, Wis., to Kansas City and other points in Missouri and Kansas. Potatoes, 87.
- Dallas, Tex., from Boynton, Okla. Paving brick, 355.
- Danville, Pa., from Portland and other points in Maine and New Hampshire. Scrap iron and old steel rails, 719.
- Danville, Va., to and from North Carolina and South Carolina. Class rates, 742.
- Deanwood, D. C., to Sewaren, N. J. Scrap tin, 349.
- Delaware Bay points from Pennsylvania and Maryland mines. Bituminous coal, 658.
- Denison, Tex., from Boynton, Okla. Paving brick, 355.
- Denson, Ohio, from Tecumseh, Mich. Gravel and sand, 196.
- Denver, Colo., from Coalmont, Colo. Soft coal, 73.
- Denver, Colo., from Michigan. Paper, 517.
- Des Moines, Iowa, from Trenton, N. J. Lightning-rod fixtures, 629.
- Detroit, Mich. Weighing and reweighing of coal and other freight, 79.
- Detroit, Mich., to Oklahoma City, Okla. Soda ash and caustic soda, 392.
- Detroit, Mich., from Philadelphia, Pa. Storage batteries, 571.
- Douglas, Ariz., from Omaha and South Omaha, Nebr. Oats and corn, 687.
- Drake, S. C., to McDonoughs, N. J. Pine Lumber, 702.
- Duluth, Minn., to Chicago and Chicago rate points. Lumber and products, 370.
- Duluth, Minn., to eastern trunk line territory. Class and commodity rates, 201.
- Duluth, Minn., to Little Rock, Hot Springs, and other Arkansas points. Matches, 103.
- Duluth, Minn., from Rosholt, S. Dak. Grain, 224.
- Duluth, Minn., to Sioux Falls, S. Dak. Class rates, 531.
- Durham, N. C., from New Orleans, La. Box material, 493.
- East Beaumont, Tex., from New Orleans, La. Commodity rates, 11.
- East Omaha, Nebr., from Kearney, Nebr. Alfalfa meal, 351.
- East St. Louis, Ill., to Buffalo, N. Y., and points in C. F. A. territory. Fresh meats and packing-house products, 665.
- East St. Louis, Ill., from Hornersville, Mo. Cotton seed, 498.
- East St. Louis, Ill., from Louisiana and Texas, destined to points north of the Ohio River and east of the Illinois-Indiana state line. Potatoes, 101.
- East St. Louis, Ill., from New York, N. Y., and other Atlantic seaboard cities. Dressed beef, 51.
- East St. Louis, Ill., to and from Ohio River points. Class and commodity rates, 411.
- East St. Louis, Ill., to various destinations. Fruits and vegetables; transportation facilities, 487.
- Eastern cities from Alexandria, Ind., and Cheboygan, Mich. News-print paper, 120.
- Eastern port cities to Charlotte, N. C., via Charleston, S. C. Class and commodity rates, 405.
- Eastern territory to Spokane, Wash., and north Pacific coast terminals. Sheet iron and steel, 669.

- Eastern trunk line territory from Duluth, Minn., and other ports at the head of Lake Superior. Class and commodity rates, 201.
- Eastman, Ga., from New York, N. Y., Cincinnati, Ohio, and Memphis, Tenn. Class and commodity rates, 672.
- Eaton, Colo., to Kansas City, Mo. Refuse sirup, 307.
- El Paso, Tex., from San Diego, Cal. Beer, 171.
- El Toro, Cal., from Mohrland and Hiawatha, Utah. Soft coal, 474.
- Elizabeth City, N. C., to Spring Grove, Pa. Lumber, 507.
- Elizabethport, N. J. Storage on scrap tin, 349.
- Elizabethport, N. J., from Lehigh region, Pa. Anthracite coal, 206.
- Elizabethport, N. J., from Mocanaqua and other points in the Wyoming region, Pa. Anthracite coal, 333.
- Emporia, Kans., from Cary, Tex., diverted in transit at Fort Worth, Tex., to Holdrege, Nebr. Peaches, 216.
- Enosburg Falls, Vt., to New England, C. F. A., and trunk line territories. Condensed and evaporated milk, 441.
- Erie, Pa., to C. F. A. territory. Gravel and sand, 196.
- Escondido, Cal., from Mohrland and Hiawatha, Utah. Soft coal, 474.
- Ethel D, Cal., from Wheeling, W. Va. Wrought-iron pipe, 264.
- Evansville, Ind., to Nashville, Tenn. Bar iron; fourth section, 108.
- Fallbrook, Cal., from Mohrland and Hiawatha, Utah. Soft coal, 474.
- Fargo, N. Dak., from St. Paul, Minn. Molding sand, 693.
- Farley, Minn., to Rothschild, Wis. Spruce pulp wood, 497.
- Fellow, Cal., from Wheeling, W. Va. Wrought-iron pipe, 264.
- Fernandina, Fla., from Graysville, Ga. Crushed stone, 614.
- Florence, Ala., from Canton, Ohio. Agricultural implements, 736.
- Florida from Birmingham district, Ala. Coal, 711.
- Florida from Graysville, Ga. Crushed stone, 614.
- Florida to Meridian, Miss. Cottonseed cake, 478.
- Follansbee, W. Va., from and to Steubenville, Ohio. Passenger fares, 281.
- Forest, Miss., from Mount Pleasant, Tenn. Fertilizer, 602.
- Fort Collins, Colo., to Kansas City, Mo. Refuse sirup, 307.
- Fort Collins, Colo., to Omaha, Nebr. Beet-sugar refuse sirup, 245.
- Fort Huachuca, Ariz., from Omaha and South Omaha, Nebr. Oats and corn, 687.
- Fort Smith, Ark., from Council Bluffs, Iowa, and Milburn, Okla., destined to Aubrey, Ark. Grain and products, 549.
- Fort Smith, Ark., from Duluth, Minn. Matches, 103.
- Fort Smith, Ark., from Mason City, Iowa. Packing-house products and fresh meats, 228.
- Fort Worth, Tex., from Louisiana. Rock salt, 242.
- Fortville, Ind., to Oklahoma City, Okla. Silicate of soda, 392.
- Fosburgh, N. C., to Portsmouth, Va. Mine-prop logs, 218.
- Frankfort, Mich. Demurrage on coal, 337.
- Fredericksburg, Va., from New York, N. Y., and other eastern cities. Commodity rates; fourth section, 593.
- Freemansburg, Pa., to Constable Hook, N. J. Refined petroleum, 725.
- Fremont, Nebr., from Coalmont, Colo. Soft coal, 73.
- Fresno, Cal., from Broken Bow, Okla. Gum and oak staves, 203.
- Fullerton, Cal., from Mohrland and Hiawatha, Utah. Soft coal, 474.
- Fullerton, La., to Galveston, Tex. Cotton, 541.
- Galveston, Tex., from Fullerton, La. Cotton, 541.
- Galveston, Tex., from New Orleans, La. Class and commodity rates, 1, 11.
- Gas Center, La., from Malvern and Perla, Ark. Fire brick, 249.

- Georgia from Graysville, Ga. Crushed stone, 614.
 Georgia to Meridian, Miss. Cottonseed cake, 478.
 Gould, Okla., to and from Wellington, Tex., originating at Witteville, Okla. Lump coal, 576.
 Grand Junction, Colo., to various destinations. Melons, 62.
 Grants Pass, Oreg., from Mococo, Cal. Fertilizer, 530.
 Grasselli, Ind., to Oklahoma City, Okla. Silicate of soda, 392.
 Graysville, Ga., to Chattanooga, Tenn., and Jacksonville and other points in Florida and Georgia. Crushed stone, 614.
 Great Falls, Mont., from Jacksonville, Fla. Grapefruit and oranges, 187.
 Greeley, Colo., from Coalmont, Colo. Soft coal, 73.
 Greeley, Colo., to Kansas City, Mo. Refuse sirup, 307.
 Gulfport, Miss., from Charleston, Miss., for export. Gum lumber, 278.
 Gulfport, Miss., from Memphis, Tenn., originating at Jackson, Mo. Bran, 695.
 Guthrie, Ky., from Cumberland Furnace and Sylvia, Tenn., destined to Nashville, Tenn. Oak crossties, 689.
 Hackett, Ark., to Onalaska, Tex. Coal, 401.
 Hammond, Ind., from Louisville, Ky., and Indianapolis, Ind., destined to Pennsylvania, New York, New Jersey, and New England. Distillers' dried grain, corn oil meal, and corn oil cake, 611.
 Hammond, Ind., to South Milwaukee, Wis. Scrap iron, 505.
 Hardin, Mont., to Minneapolis, Minn. Wheat, 305.
 Harrisburg, Ill., to Mason City, Iowa. Coal, 353.
 Hartford, Ky., from Mount Pleasant, Tenn. Fertilizer, 602.
 Havre, Mont., from Bonners Ferry, Idaho. Lumber, 268.
 Heaton, N. Dak., to Minneapolis, Minn., reconsigned to Osceola, Wis. Oats and speltz, 335.
 Helena, Ark., from Council Bluffs, Iowa, and Milburn, Okla. Grain and products; fourth section, 549.
 Helena, Mont., from Jacksonville, Fla. Oranges and grapefruit, 187.
 Henderson, Tex., to Emporia, Kans., and Kansas City, Mo., diverted in transit at Fort Worth, Tex., to Holdredge, Nebr. Peaches, 216.
 Hereford, Ariz., from Omaha and South Omaha, Nebr. Oats and corn, 687.
 Hertford, N. C., to Atlantic City, N. J., reconsigned to Tom's River, N. J. Lumber 709.
 Hiawatha, Utah, to California. Soft coal, 474.
 Highwood, Mont., from Cowley, Wyo. Petroleum oil and products, 221.
 Hoffman, Ark., to Onalaska, Tex. Coal, 401.
 Holcomb, Mo., to Marshall, Minn. Watermelons, 740.
 Holdredge, Nebr., from Craft and Henderson, Tex., originally consigned to Emporia, Kans., and Kansas City, Mo., diverted at Fort Worth, Tex. Peaches, 216.
 Hood River, Oreg., to Winnipeg, Brandon, and Portage la Prairie, Manitoba. Fruits and berries, 733.
 Hopkinsville, Ky., from Vincennes, Ind. Bar iron, 108.
 Hornersville, Mo., to East St. Louis, Ill. Cottonseed, 498.
 Hospers, Iowa, to Council Bluffs, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo. Corn, 616.
 Hot Springs, Ark., from Duluth, Minn. Matches, 103.
 Houston, Tex., from New Orleans, La. Class and commodity rates, 1, 11.
 Hubbell's Mills, Mich., to Menominee, Mich. Logs, 464.
 Hudson, Wyo., to Steinauer, Nebr. Soft lump coal, 531.
 Hugo, N. C., to Portsmouth, Va. Mine-prop logs, 218.
 Huntington, Ark., to Onalaska, Tex. Coal, 401.

- Hunt's Siding, Va., to Philadelphia and New York. Potatoes, 467.
Hutchinson, Kans., to Oklahoma City, Okla. Soda ash, 392.
Idaho to Los Angeles and other California points. Grain and products, 367.
Idaho from Pacific coast terminals. Iron and steel, 545.
Illinois from Acme, Tex. Cement plaster, 639.
Illinois from California, Oregon, and Washington. Lumber, 105.
Illinois to C. F. A. and trunk line territories. Sash, doors, and blinds, 105.
Illinois to Indiana and Illinois. Crushed stone, 389.
Illinois from Lehigh, Kankakee, and West Kankakee, Ill. Crushed stone, 389.
Illinois-Indiana state line, points east of, from East St. Louis, Ill., originating in Louisiana and Texas. Potatoes, 101.
Illinois mines to points west of the Mississippi River. Bituminous coal, 94.
Illinois territory from Michigan. Paper, 517.
Indiana from Lehigh, Kankakee, and West Kankakee, Ill. Crushed stone, 389.
Indiana from Michigan. Paper, 517.
Indiana to Oklahoma City, Okla. Soda ash and caustic soda, 392.
Indiana from Union City, Ind. Iron pipe, 627.
Indiana from Wisconsin. Paper and wood pulp, 120.
Indianapolis, Ind., to Belle Plaine, Minn. Wall and floor tile, 363.
Indianapolis, Ind., to Hammond, Ind., destined to Pennsylvania, New York, New Jersey, and New England. Corn oil meal, and corn oil cake, 611.
Indianapolis, Ind., to San Francisco, Los Angeles, Portland, and Seattle. Car-buretors, 288.
Inland empire territory to and from Astoria, Oreg. Class and commodity rates, 16.
Iowa from Acme, Tex. Cement plaster, 639.
Iowa from California, Oregon, and Washington. Lumber, 105.
Iowa to C. F. A. and trunk line territories. Sash, doors, and blinds, 105.
Iowa to Council Bluffs, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo. Corn, 616.
Iowa to Kansas City, Mo., reshipped to points in Kansas. Corn and oats, 682.
Iowa from Minnesota, Wisconsin, and upper peninsula of Michigan. Lumber, 587.
Island Falls, Me., from New York, N. Y. Dry hides, 226.
Issaquah, Wash., to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn. Fir lumber, cedar shingles, and kiln-dried cedar siding, 399.
Jackson, Mich., to Los Angeles, Cal. Wooden motor truck wheels, 292.
Jackson, Mich., from Pittsburgh, Reading, Nicetown, and Steelton, Pa., and Youngstown, Ohio. Bar steel, 233.
Jackson, Mo., to Memphis, Tenn., reconsigned to Gulfport, Miss. Bran, 695.
Jackson, Tenn., to Preston, Ont. Oak lumber, 357.
Jacksonville, Fla., to Billings, Butte, Helena, and Great Falls, Mont. Grapefruit and oranges, 187.
Jacksonville, Fla., from Camden, N. J. Feedwater heater, 499.
Jacksonville, Fla., from Graysville, Ga. Crushed stone, 614.
Jefferson City, Mo., from St. Louis, Mo., originating at Clifton Heights, Pa. Cotton piece goods, 537.
Joplin, Mo., from Altoona, Kans. Fire-clay retorts, 365.
Joplin, Mo., from Cushing, Okla. Crude petroleum oil, 358.
Kalamazoo, Mich., to Boston, New York, Philadelphia, Washington, and Syracuse. Printing paper, 120.
Kalamazoo, Mich., to C. F. A., Illinois, western trunk line, trans-Missouri, and Mississippi Valley territories, Chicago, Milwaukee, Denver, New Orleans, Nashville, and points in Oklahoma and Louisiana. Paper, 517.
Kanawha district, W. Va., to Culpeper and Manassas, Va. Bituminous coal, 310.

- Kankakee, Ill., to Indiana and Illinois. Crushed stone, 389.
 Kansas from Acme, Tex. Cement plaster, 639.
 Kansas from Arkansas, Louisiana, and Texas. Yellow-pine lumber, 390.
 Kansas from Coalmont, Colo. Soft coal, 73.
 Kansas to Colorado and New Mexico. Broom corn, 94.
 Kansas from Kansas City, Mo., originating at points in South Dakota, Minnesota, and Iowa. Corn and oats, 682.
 Kansas from South Canon, Colo. Bituminous coal, 174.
 Kansas from Wisconsin. Potatoes, 87.
 Kansas City, Mo. Transit arrangements on stock feed, 307.
 Kansas City, Mo., from Coalmont, Colo. Soft coal, 73.
 Kansas City, Mo., from Colorado and Nebraska. Refuse sirup, 307.
 Kansas City, Mo., to Corpus Christi, Tex. Wooden building material; fourth section, 276.
 Kansas City, Mo., from Henderson, Tex., diverted in transit at Fort Worth, Tex., to Holdrege, Nebr. Peaches, 216.
 Kansas City, Mo., from Iowa, reconsigned at Council Bluffs, Iowa. Corn, 616.
 Kansas City, Mo., from Ritter, Iowa. Shelled corn, 624.
 Kansas City, Mo., from South Dakota, Minnesota, and Iowa, reshipped to points in Kansas. Corn and oats, 682.
 Kansas City, Mo., from Wisconsin. Potatoes, 87.
 Kearney, Nebr., from Coalmont, Colo. Soft coal, 73.
 Kearney, Nebr., to East Omaha, Nebr. Alfalfa meal, 351.
 Kentucky from Mount Pleasant, Tenn. Fertilizer, 602.
 Kentucky from Wisconsin. Paper and wood pulp, 120.
 Kentucky mines to Cincinnati, Ohio. Coal, 704.
 Kilbourn, Wis., to Kansas City and other points in Missouri and Kansas. Potatoes, 87.
 Kiptopeke, Va., to Philadelphia and New York. Potatoes, 467.
 Knoxo, Miss., to Chicago, Ill. Lumber, 490.
 Knoxville, Tenn., from Sanford and River Falls, Ala. Lumber, 304.
 La Crosse, Wis., from Oklahoma and Texas. Cotton linters, 31.
 La Crosse, Wis., to St. Paul, Minneapolis, Minnesota Transfer, and other points in southern Minnesota. Class rates, 453.
 Lake Charles, La., from Mason City, Iowa. Packing-house products and fresh meats, 228.
 Lake Erie perts to C. F. A. territory. Sand and gravel, 196.
 Lake Shore, Miss., to New Orleans, La. Logs, 299.
 Lake Superior ports (upper) to eastern trunk line territory. Class and commodity rates, 201.
 Lakeland, Fla., from Graysville, Ga. Crushed stone, 614.
 Lancaster, Ohio, from Ottawa, Ill. Glass sand, 331.
 Lansing, Mich., to Los Angeles, Cal. Wooden motor truck wheels, 292.
 Laramie, Wyo., from Coalmont, Colo. Soft coal, 73.
 Lebanon, Pa., from Portland and other points in Maine and New Hampshire. Scrap iron and old steel rails, 719.
 Lehigh, Ill., to Indiana and Illinois. Crushed stone, 389.
 Lehigh region, Pa., to Elizabethport, N. J., for transshipment. Anthracite coal, 206.
 Lemon City, Fla., from Seeley Creek, N. Y. Seed potatoes, 583.
 Lima, Ohio, from Tecumseh, Mich. Gravel and sand, 196.
 Lincoln, Nebr., from Iowa, reconsigned at Council Bluffs, Iowa. Corn, 616.
 Little Rock, Ark., from Duluth, Minn. Matches, 103.
 Little Rock, Ark., from Mason City, Iowa. Packing-house products and fresh meats, 228.
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- Lizton, Ind., from Coxton, Pa., reconsigned to Chicago, Ill. Anthracite coal, 495.
- Long Branch, N. J., from Canton, Ohio. Paving blocks, 345.
- Longmont, Colo., to Kansas City, Mo. Refuse sirup, 307.
- Los Angeles, Cal., from Chicago, Ill., and Indianapolis, Ind. Carburetors, 288.
- Los Angeles, Cal., from Idaho and Utah. Grain and products, 367.
- Los Angeles, Cal., from Newark, N. J., and Lansing and Jackson, Mich. Wooden motor truck wheels, 292.
- Louisiana to East St. Louis, Ill., destined to points north of the Ohio River and east of the Illinois-Indiana state line. Potatoes, 101.
- Louisiana to Fort Worth and North Fort Worth, Tex. Rock salt, 242.
- Louisiana from Malvern and Perla, Ark. Fire brick, 249.
- Louisiana from Mason City, Iowa. Packing-house products and fresh meats, 228.
- Louisiana to Memphis, Tenn. Hardwood logs and bolts, 432.
- Louisiana to Meridian, Miss. Cottonseed cake, 478.
- Louisiana from Michigan. Paper, 517.
- Louisiana to Nebraska and Kansas. Yellow-pine lumber, 330.
- Louisiana from various points. Through rates, 153.
- Louisiana ports from Oklahoma. Wheat, 33.
- Louisville, Ky., to Hammond, Ind., destined to Pennsylvania, New York, New Jersey, and New England. Distillers' dried grain, 611.
- Louisville, Ky., from Michigan. Paper, 517.
- Louisville, Miss., to Sylacauga, Ala., dressed in transit at Newton, Miss. Lumber, 679.
- Loveland, Colo., to Kansas City, Mo. Refuse sirup, 307.
- Loveland, Colo., to Omaha, Nebr. Beet-sugar refuse sirup, 245.
- Ludvine, La., to Bowie, La., for reshipment. Lumber, 625.
- Lyons, Iowa, to St. Louis, Mo. Iron locks and rods, 542.
- McDonoughs, N. J., from Drake, S. C. Pine lumber, 702.
- McGill, Nev., from Portland, Oreg. Lumber, 697.
- Madison, Fla., from Birmingham district, Ala. Coal, 711.
- Maine to Pennsylvania. Scrap iron and old steel rails, 719.
- Malvern, Ark., to Louisiana. Fire brick, 249.
- Malvern, Pa., to C. F. A., and New England territories. Condensed and evaporated milk, 441.
- Manassas, Va., from Kanawha and New River districts, W. Va. Bituminous coal, 310.
- Mansfield, Pa., to C. F. A., and New England territories. Condensed and evaporated milk, 441.
- Margaret, Ala., to Florida. Coal, 711.
- Marshall, Minn., from Holcomb, Mo. Watermelons, 740.
- Marshalltown, Iowa, from St. Louis, Mo. Buggy bodies, 634.
- Maryland mines to Chesapeake Bay and Delaware Bay points. Bituminous coal, 658.
- Maryland-Delaware peninsula from Pennsylvania and Maryland mines. Bituminous coal, 658.
- Mason City, Iowa. Demurrage on coal, 353.
- Mason City, Iowa, to Arkansas, Louisiana, and Texas. Packing-house products and fresh meats, 228.
- Mayport, Fla., from Graysville, Ga. Crushed stone, 614.
- Mears Mine, Mo., from Chelsea, Okla. Petroleum fuel oil, 28.
- Medford, Oreg., from Mococo, Cal. Fertilizer, 530.
- Meehan Junction, Miss., to Chicago, Ill. Yellow-pine lumber, 117.
- Memphis, Tenn., from Arkansas. Wheat and corn, 94.
- Memphis, Tenn., from Arkansas, Louisiana, and Oklahoma. Hardwood logs and bolts, 432.
- Memphis, Tenn., to Eastman, Ga. Class and commodity rates, 672.

- Memphis, Tenn., to Gulfport, Miss., originating at Jackson, Mo. Bran, 695.
- Memphis, Tenn., from Sheboygan, Wis. Mineral water, ginger ale, and advertising matter, 491.
- Menard, Tex., from Adrian, Mich. Wire fence, 721.
- Nominee, Mich., from Spur 320, Wasas Siding, Hubbell's Mills, and Pori, Mich. Logs, 464.
- Meridian, Miss. Transit arrangements on cottonseed cake, 478.
- Meridian, Miss., to C. F. A., trunk line and western trunk line territories, and to points on and south of the Ohio and Potomac rivers, and east of the Mississippi River. Cottonseed meal, 478.
- Miami, Fla., from Graysville, Ga. Crushed stone, 614.
- Michigan to C. F. A., Illinois, western trunk line, trans-Missouri, and Mississippi Valley territories, Chicago, Milwaukee, Denver, New Orleans, Nashville, and points in Oklahoma and Louisiana. Paper, 517.
- Michigan to Menominee, Mich. Logs, 464.
- Michigan to Missouri, North Dakota, South Dakota, and Minnesota. Lumber, 587.
- Michigan to Oklahoma City, Okla. Silicate of soda, 392.
- Michigan from Wisconsin. Paper and wood pulp, 129.
- Midcontinent field, Okla.-Kans., to various destinations. Tank-car tests for transportation of petroleum products, 65.
- Middlesboro-Jellico district to Cincinnati, Ohio. Coal, 704.
- Middletown, Ohio, to Pacific coast points. Corrugated galvanized sheet iron, 568.
- Midway, Ky., to Norfolk and Newport News, Va., Baltimore, Md., and Philadelphia, Pa. Distillers' dried grain, 715.
- Milburn, Okla., to Aubrey, Ark. Oats, 549.
- Milldale, Fla., from Graysville, Ga. Crushed stone, 614.
- Milso, Cal., from Wheeling, W. Va. Wrought-iron pipe, 264.
- Milwaukee, Wis., from Chicago, Ill. Scrap brass, scrap copper, and slab zinc, 631.
- Milwaukee, Wis., to Coopersville, Nunica, and Muskegon, Mich. Passenger fares, 98.
- Milwaukee, Wis., from Michigan. Paper, 517.
- Minneapolis, Minn., to Alexandria, La. Flour, 290.
- Minneapolis, Minn., to Boston, Mass., and other points in New England. Green salted hides, 194.
- Minneapolis, Minn., to Chicago and Chicago rate points. Lumber and products, 370.
- Minneapolis, Minn., from Hardin, Mont. Wheat, 305.
- Minneapolis, Minn., from Heaton, N. Dak., reconsigned to Osceola, Wis. Oats and speltz, 335.
- Minneapolis, Minn., from La Crosse, Wis. Proportional rates, 453.
- Minnesota from Bonners Ferry, Idaho. Lumber, 268.
- Minnesota to Chicago and Chicago rate points. Lumber and products, 370.
- Minnesota to Kansas City, Mo., reshipped to points in Kansas. Corn and oats, 682.
- Minnesota from La Crosse, Wis. Class rates, 453.
- Minnesota to Missouri, Iowa, North Dakota, South Dakota, and Minnesota. Lumber, 587.
- Minnesota from Wisconsin, upper peninsula of Michigan, and other points in Minnesota. Lumber, 587.
- Minnesota Transfer, Minn., to Boston, Mass., and other points in New England. Green salted hides, 194.
- Minnesota Transfer, Minn., to Chicago and Chicago rate points. Lumber and products, 370.
- Minnesota Transfer, Minn., from Issaquah and Van Zandt, Wash. Fir lumber, cedar shingles, and kiln-dried cedar siding, 399.
- Minnesota Transfer, Minn., from La Crosse, Wis. Proportional rates, 453.

- Mississippi to Meridian, Miss. Cottonseed cake, 478.
 Mississippi from Mount Pleasant, Tenn. Fertilizer, 602.
 Mississippi to New Orleans, La. Logs, 299.
 Mississippi River, points west of, from Illinois mines and other points. Bituminous coal, 94.
 Mississippian Valley territory from Michigan. Paper, 517.
 Missouri from Acme, Tex. Cement plaster, 639.
 Missouri from Minnesota, Wisconsin, and upper peninsula of Michigan. Lumber, 587.
 Missouri from Wisconsin. Potatoes, 87.
 Missouri River crossings from Michigan. Paper, 517.
 Mobile, Ala., from Charleston, Miss., for export. Hardwood lumber, 278.
 Mocanaqua, Pa., to Elizabethport, N. J., for reshipment. Anthracite coal, 333.
 Mococo, Cal., to Oregon. Fertilizer, 530.
 Mohrland, Utah, to California. Soft coal, 474.
 Monroe, La., from Malvern and Perla, Ark. Fire brick, 249.
 Monson, Cal., to Spokane, Wash. Cabbage and melons, 209.
 Montana from Bonners Ferry, Idaho. Lumber, 268.
 Monticello, Fla., from Birmingham district, Ala. Coal, 711.
 Moron, Cal., from Wheeling, W. Va. Wrought-iron pipe, 264.
 Morton, Miss., from Mount Pleasant, Tenn. Fertilizer, 602.
 Mount Pleasant, Tenn., to Alabama, Mississippi, and Kentucky. Fertilizer, 602.
 Mount Vernon, Ohio, from Ottawa, Ill. Glass sand, 331.
 Muncie, Ind. Absorption of switching charges, 510.
 Murfreesboro, Ark., from Willard, Ky. Second-hand articles, 573.
 Muskegon, Mich., from Milwaukee, Wis. Passenger fares, 98.
 Muskogee, Okla., from Bedford, Ind. Building stone, 485.
 Nabors, Miss., from Mount Pleasant, Tenn. Fertilizer, 602.
 Naco, Ariz., from Omaha and South Omaha, Nebr. Oats and corn, 687.
 Nashville, Tenn., from Cumberland Furnace and Sylvia, Tenn. Oak crossties, 689.
 Nashville, Tenn., from Evansville, Ind. Bar iron; fourth section, 108.
 Nashville, Tenn., from Michigan. Paper, 517.
 National City, Cal., from Mohrland and Hiawatha, Utah. Soft coal, 474.
 Nebraska from Arkansas, Louisiana, and Texas. Yellow-pine lumber, 330.
 Nebraska from Coalmont, Colo. Soft coal, 73.
 Nebraska to Kansas City, Mo. Refuse sirup, 307.
 Nebraska from South Canon, Colo. Bituminous coal, 174.
 New England to C. F. A. territory. Paper, 120.
 New England to Charlotte, N. C., via Charleston, S. C. Class and commodity rates, 405.
 New England from Louisville, Ky., and Indianapolis and Hammond, Ind. Distillers' dried grain, corn oil meal, and corn oil cake, 611.
 New England to and from New York, N. Y. Class and commodity rates, 61.
 New England from St. Paul, Minneapolis, and Minnesota Transfer, Minn. Green salted hides, 194.
 New England territory from Enosburg Falls, Vt., Bridgeton, N. J., and points in Pennsylvania. Condensed and evaporated milk, 441.
 New Hampshire to Pennsylvania. Scrap iron and old steel rails, 719.
 New Jersey from Louisville, Ky., and Indianapolis and Hammond, Ind. Distillers' dried grain, corn oil meal, and corn oil cake, 611.
 New Mexico from Kansas and Oklahoma. Broom corn, 94.
 New Mexico from San Diego, Cal. Beer, 171.
 New Orleans, La., from Ansley, Lake Shore, and Waveland, Miss. Logs, 299.
 New Orleans, La., to Cincinnati, Ohio. Wood moldings, 707.

- New Orleans, La., to Durham, N. C. Box material, 493.
 New Orleans, La., from Michigan. Paper, 517.
 New Orleans, La., from Oklahoma. Wheat, 33.
 New Orleans, La., to Orange, Beaumont, Galveston, and other Texas points. Class and commodity rates, 1, 11.
 New Orleans, La., to Texarkana, Ark.-Tex. Bananas and other tropical fruits, 55.
 New River district, W. Va., to Culpeper and Manassas, Va. Bituminous coal, 310.
 New York to C. F. A. territory. Newsprint paper, 120.
 New York from Louisville, Ky., and Indianapolis and Hammond, Ind. Distillers' dried grain, corn oil meal, and corn oil cake, 611.
 New York from Wisconsin. Paper and wood pulp, 120.
 New York, N. Y., to Birmingham, Ala. Class rates, 516.
 New York, N. Y., from and to Boston and other New England points. Class and commodity rates, 61.
 New York, N. Y., from Chicago, Ill. Pickles and machinery, 569.
 New York, N. Y., to Eastman, Ga. Class and commodity rates, 672.
 New York, N. Y., to Island Falls, Me. Dry hides, 226.
 New York, N. Y., from Kalamazoo, Mich. Printing paper, 120.
 New York, N. Y., from Malvern and Mansfield, Pa., Bridgeton, N. J., and Enosburg Falls, Vt., reshipped to points in C. F. A. territory. Condensed and evaporated milk, 441.
 New York, N. Y., from Norfolk, Va. Fruits, vegetables, and strawberries, 252.
 New York, N. Y., to St. Louis and East St. Louis. Dressed beef, 51.
 New York, N. Y., from Snow Hill, N. C. Rosin, 535.
 New York, N. Y., from Virginia. Potatoes, 467.
 New York, N. Y., to Washington, D. C. Commodity rates, 593.
 New York, N. Y., from Woodland, Me. Newsprint and wrapping paper, 213.
 Newark, N. J., to Los Angeles, Cal. Wooden motor truck wheels, 292.
 Newark, N. J., from Malvern and Mansfield, Pa., Bridgeton, N. J., and Enosburg Falls, Vt., and other points. Condensed and evaporated milk, 441.
 Newark, N. J., from Wendell, N. C. Lumber, 508.
 Newberry, Pa., from Portland and other points in Maine and New Hampshire. Scrap iron and old steel rails, 719.
 Newpoint, Ind. Switching allowances, 316.
 Newport, Vt. Customs duties pertaining to traffic from Canada, 636.
 Newport News, Va., from Midway, Ky. Distillers' dried grain, 715.
 Newton, Miss., from Louisville, Miss., reshipped to Sylacauga, Ala. Lumber, 679.
 Nicetown, Pa., to Jackson, Mich. Bar steel, 233.
 Nickel, Ind., to Chicago, Ill. Molding sand, 723.
 Niotaze, Kans., to Superior, Nebr. Refined petroleum, 591.
 Norfolk, Va., from Malvern and Mansfield, Pa., Bridgeton, N. J., and Enosburg Falls, Vt., and other points. Condensed and evaporated milk, 441.
 Norfolk, Va., from Midway, Ky. Distillers' dried grain, 715.
 Norfolk, Va., to New York, N. Y. Fruits, vegetables, and strawberries, 252.
 Norfolk, Va., to North Carolina. Fertilizer, 190.
 North Carolina from and to Danville, Va. Class rates, 742.
 North Carolina to Meridian, Miss. Cottonseed cake, 478.
 North Carolina from Norfolk, Va. Fertilizer, 190.
 North Dakota from Bonners Ferry, Idaho. Lumber, 268.
 North Dakota from Minnesota, Wisconsin, and upper peninsula of Michigan. Lumber, 587.
 North Fort Worth, Tex., to Big Horn Wye (Hardin), Mont., branded at Clearmont, Wyo. Cattle, 118.
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North Fort Worth, Tex., from Louisiana. Rock salt, 242.
 North Milwaukee, Wis., to St. Louis, Mo. Automobile gear frame parts, 503.
 North Pacific coast terminals from eastern territory. Sheet iron and steel, 669.
 North Pacific coast terminals to Spokane and other points in Washington, Oregon, and Idaho. Iron and steel articles, 545.
 North Platte, Nebr., from Coalmont, Colo. Soft coal, 73.
 Nunica, Mich., from Milwaukee, Wis. Passenger fares, 98.
 Oceanside, Cal., from Mohrland and Hiawatha, Utah. Soft coal, 474.
 Oden, Ala., from Mount Pleasant, Tenn. Fertilizer, 602.
 Official classification territory. Classification of paper, 120.
 Official classification territory from Saugerties, N. Y. Surface-coated printing paper, 151.
 Ohio from Michigan. Paper, 517.
 Ohio to Oklahoma City, Okla. Soda ash, caustic soda, and silicate of soda, 392.
 Ohio from Tecumseh, Mich. Sand and gravel, 196.
 Ohio from Union City, Ind. Iron pipe, 627.
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 Oldham, Miss., from Mount Pleasant, Tenn. Fertilizer, 602.
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 Omaha, Nebr., from Hudson, Wyo., reconsigned to Steinauer, Nebr. Soft lump coal, 581.
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 O'Neill, Nebr., from Hudson, Wyo., reconsigned to Omaha, Nebr., and reconsigned to Steinauer, Nebr. Soft lump coal, 581.
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- Philadelphia, Pa., to Washington, D. C. Commodity rates, 593.
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Texas to Nebraska and Kansas. Yellow-pine lumber, 330.
Texas from New Orleans, La. Class and commodity rates, 1, 11.
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- Utah to various destinations and Canada. Melons, 62.
- Utah mines to California. Soft coal, 474.
- Vacherie, La., to Youngstown, Ohio. Cypress laths, 539.
- Valpariso, Ind., to Chicago, Ill. Molding sand, 723.
- Van Zandt, Wash., to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn. Fir lumber, cedar shingles, and kiln-dried cedar siding, 399.
- Vaughan, N. C., to Portsmouth, Va. Mine-prop logs, 218.
- Vermont to St. Paul territory, Minn. Rough and dressed marble, 12.
- Vicksburg, Mich., to C. F. A., Illinois, western trunk line, trans-Missouri and Mississippi Valley territories, Chicago, Milwaukee, Denver, New Orleans, Nashville, and points in Oklahoma and Louisiana. Paper, 517.
- Vincennes, Ind., to Hopkinsville, Ky. Bar iron, 108.
- Virginia to Philadelphia, Pa., and New York, N. Y. Potatoes, 467.
- Wahkiakus, Wash., to Portland, Oreg. Stone paving blocks, 732.
- Walsenburg, Colo., to Coldwater, Kans. Nut coal, 690.
- Walton, Ala., from Mount Pleasant, Tenn. Fertilizer, 602.
- Warren, Ariz., from Omaha and South Omaha, Nebr. Oats and corn, 687.
- Wasas Siding, Mich., to Menominee, Mich. Logs, 464.
- Wasco, Cal., from Wheeling, W. Va. Wrought-iron pipe, 264.
- Washington from Pacific coast terminals. Iron and steel, 545.
- Washington to South Utica, N. Y., Crawford, Nebr., and Minnesota Transfer, Minn. Cedar shingles, fir lumber, and kiln-dried cedar siding, 399.
- Washington to Wisconsin, Iowa, and Illinois. Lumber, 105.
- Washington Court House, Ohio, from Plaquemine, La. Cypress lumber, 539.
- Washington, D. C., from Kalamazoo, Mich. Printing paper, 120.
- Washington, D. C., from Kanawha and New River districts, W. Va. Bituminous coal; fourth section, 310.
- Washington, D. C., from New York, N. Y., and other eastern points. Commodity rates, 593.
- Waveland, Miss., to New Orleans, La. Logs, 299.
- Weeks, La., to Fort Worth and North Fort Worth, Tex. Rock salt, 242.
- Weirgor, Wis., to Chicago, Ill. Lumber, 598.
- Wellington, Tex., from and to Gould, Okla., originating at Witteville, Okla. Lump coal, 576.
- Wenasoga, Miss., from Mount Pleasant, Tenn. Fertilizer, 602.
- Wendell, N. C., to Newark, N. J. Lumber, 508.
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- Western trunk-line territory from Meridian, Miss. Cottonseed meal, 478.
- Western trunk-line territory from Michigan. Paper, 517.
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- Westmoreland district, Pa., to Chesapeake Bay and Delaware Bay points. Bituminous coal, 658.
- Westport, Ind. Switching allowances, 316.
- Westville, Tex., to Oklahoma. Lumber, 746.

- Wetwego, La., from Oklahoma. Wheat, 33.
- Wheeling, W. Va., to Wasco, Pentland, Ethel D, Moron, Milso, Fellow, and Shale, Cal. Wrought-iron pipe, 264.
- Whitesboro, Tex., from Witteville, Okla. Lump coal; fourth section, 585.
- Wichita, Kans., to Corpus Christi, Tex. Wooden building material; fourth section, 276.
- Wilkeson, Wash., to Salem, Oreg. Coke, 600.
- Willard, Ky., to Murfreesboro, Ark. Secondhand articles, 573.
- Williams, Ariz., from Chicago, Ill. Passenger fares, 294.
- Williamsport-Cumberland group to C. F. A. territory. Printing paper, 120.
- Willow Grove, Va., to Philadelphia and New York. Potatoes, 467.
- Wilmington, N. C., to Salem, Mass. Lumber, 621.
- Winnfield, La., from Malvern and Perla, Ark. Fire brick, 249.
- Winnipeg, Manitoba, from Hood River, Oreg. Fruits and berries, 733.
- Winona, Minn., from La Crosse, Wis. Proportional class rates, 453.
- Wisconsin from California, Oregon, and Washington. Lumber, 105.
- Wisconsin to C. F. A. and trunk-line territories. Sash, doors, and blinds, 105.
- Wisconsin to Indiana, Michigan, Ohio, Kentucky, West Virginia, Pennsylvania, and New York. Paper and wood pulp, 120.
- Wisconsin to Kansas City and other points in Missouri and Kansas. Potatoes, 87.
- Wisconsin to Missouri, Iowa, North Dakota, South Dakota, and Minnesota. Lumber, 587.
- Witteville, Okla., to Burkburnett, Tex. Lump coal, 585.
- Witteville, Okla., to Gould, Okla., reconsigned to Wellington, Tex., and return to Gould. Lump coal, 576.
- Woodland, Me., to New York, N. Y. News print and wrapping paper, 213.
- Wyandotte, Mich., to Oklahoma City, Okla. Soda ash and caustic soda, 392.
- Wyoming from Coalmont, Colo. Soft coal, 73.
- Wyoming from South Canon, Colo. Bituminous coal, 174.
- Wyoming region, Pa., to Elizabethport, N. J. Anthracite coal, 333.
- Youngstown, Ohio, to Jackson, Mich. Bar steel, 233.
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[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

ABSORPTION.

Tariff of initial carrier erroneously provided for absorption of switching charges to a plant located on line of delivering carrier who was not a party to said tariff and whose tariffs specifically provided for application of road-haul rates to that point. Initial carrier expected to refund overcharge. *Chelsea Refining Co. v. M. P. Ry. Co.* 28.

Refusal of trunk lines serving Muncie, Ind., to absorb switching charges of the Muncie & Western to and from industries involved while absorbing switching charges of the Muncie Belt and Lake Erie Belt to and from same industries found unjustly discriminatory. *In re Muncie & Western R. R. Co.* 510 (514-515).

Practice of the Boston & Maine in absorbing connecting line charges to and from Commonwealth pier, Boston, while refusing to absorb connecting line charges to and from complainant's dock at East Boston is unduly prejudicial to complainant and its patrons. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643.

Cancellation of provisions for absorption of connecting line charges and wharfage on import and export freight moving by way of Commonwealth pier, justified. *Id.*

The fact that switching charges on molding sand from Valparaiso, Nickel, Ind., to Chicago, Ill., were not absorbed until after shipments moved, without additional evidence to show that rate charged was unreasonable, does not afford a sufficient basis for an award of reparation. *Garden City Sand Co. v. N. Y., C. & St. L. R. R. Co.* 723 (724).

ADDITIONAL CHARGES.

When a carrier adds to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at one industry while treating a like service at other similarly circumstanced industries as covered by the line-haul rate, it creates an unjust discrimination. *Westport Stone Co. and Big Four Stone Co. Case* 316 (318).

In the absence of changed conditions, a charge in addition to the line-haul rate would be improper for services which by long-continued general custom and usage have been treated as embodied in the line-haul charge. *Id.* (318).

Additional charge of \$5 assessed by each of defendants on a mixed carload of oats and speltz, separated by bulkhead, from Heaton, N. Dak., to Minneapolis, Minn., and reconsigned to Osceola, Wis., not found unreasonable or unlawful. The transportation comprised two distinct local movements. *Osceola Mill & Elevator Co. v. M., St. P. & S. S. M. Ry. Co.* 335 (336).

ADDITIONAL SERVICE.

Extra service incident to reconsignment and diversion justifies an extra charge. *Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. Co.* 551 (557).

ADJUSTMENT OF RATES.

From New England to the west has been illogical at least since 1900, when the so-called differential lines operating through Canada established the relatively low rate to Chicago. *Official Classification Rates on Paper*, 120 (122).

ADMINISTRATIVE RULING.

Rule 68, Tariff Circular 18-A, cited. *Chelsea Refining Co. v. M. P. Ry. Co.* 28 (30).

Conference Ruling 286 (f) applies only to cases in which the initial carrier has a discretion or control in the matter of routing. *Chapin & Co. v. C., I. & L. Ry. Co.* 611 (613).

Conference Ruling 214, cited. *Meeds Lumber Co. v. A. & V. Ry. Co.* 679 (680).

Conference Ruling 200 (b), cited. *Puyallup & Sumner Fruit Growers' Asso. v. N. P. Ry. Co.* 701 (702).

Conference Ruling 348, cited. *Woodland Lumber Co. v. N. S. R. R. Co.* 709 (710).

Conference Ruling 362, cited on question of assignment. *Robinson Co. v. Am. Exp. Co.* 733 (735).

Conference Ruling 214 (g), cited. *Gamble-Robinson Co. v. C. & E. I. R. R. Co.* 740 (741).

ADMISSION.

Defendants' witness admitted that he considered the charges excessive in view of the service performed, but this admission can not be considered controlling. *Zimmerman v. C., R. I. & P. Ry. Co.* 118 (119).

Defendant admits that rates were unreasonable and is willing to join other carriers defendant in making reparation. *Reparation awarded.* *Adams Stave Co. v. T., O. & E. R. R. Co.* 203 (204, 205).

Carriers admit that rate charged was unreasonable and excessive. *Reparation awarded on basis of rate subsequently established.* *Hunt & Co. v. Bull S. S. Co.* 226 (227).

Defendant admits that rate was unreasonable, and is willing to make reparation. *Reparation awarded.* *Sheets v. L. & N. R. R. Co.* 299.

Carrier admitted that rate assailed was unreasonable, and expressed willingness to make reparation; but a mere willingness to pay reparation without evidence that the rate charged was unreasonable is not sufficient upon which to base an award of reparation. *Elden v. S. P. Co.* 530.

Defendants' admission that rates charged were unreasonable and that complainant was misled to its injury through the "ignorance, fault, and misrepresentations of the carriers," will not justify an award of reparation. *Chapin & Co. v. C., I. & L. Ry. Co.* 611 (612).

Notwithstanding carriers' admissions that rates charged were unreasonable for purposes of informal proceedings, complainant is under the burden of proving rates assailed to be unreasonable before reparation can be awarded. *Joseph Bros. & Co. v. M. C. R. R. Co.* 719 (720).

ADVANCE IN RATES.

When a carrier elects to justify increased rates by attempting to show cost of service performed the formulae and methods used must be fully disclosed. It is not sufficient to state that an average switching movement costs a specific sum, that a certain movement consists of a given number of "handlings," and that the value of terminals used is a given amount. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (84).

ADVANCE IN RATES—Continued.

It can not be maintained that because a carrier has once chosen to make a low rate to meet water competition, it is estopped from thereafter increasing that rate. Lumber between Points in Western Trunk Line Territory, 370 (376).

Carrier must justify increase caused by cancellation of an absorption.

National Dock & Storage Warehouse Co. v. B. & M. R. R. 643 (650). When investigating the propriety of increased rates under a suspension order the Commission is not limited to a consideration of their reasonableness, but may also consider their relation to other rates and what their consequence may be, and to what extent they may involve discriminations that are unlawful. Danville, Va., Class and Commodity Rates, 742 (745).

Beer: The removal of fourth section violations is not in itself a justification of resulting increased rates; but in this instance the cancellation of a 60-cent rate on beer, San Diego, Cal., to Lordsburg, N. M., for a three-line haul over a circuitous route, leaving the fifth-class rate of \$1.08 applicable, is found justified. Mission Brewing Co. v. A., T. & S. F. Ry. Co. 171 (172).

Broom corn: Increased rates from Kansas and Oklahoma to Colorado and New Mexico not justified. No testimony was offered explaining or attempting to justify same. Rate increases in Western Classification Territory, 94 (97).

Cast-iron pipe: Increased rate from Charlotte, N. C., to Pacific coast terminals, effected by the cancellation of the low rate said to have been published by mistake, found not justified; but carriers are found to have justified the establishment of a rate from Charlotte which shall not exceed the rate from Chattanooga or Birmingham by more than 5 cents. Cast-Iron Pipe from North Carolina Points, 183.

Class rates: Scale of, between New Orleans and Orange, Beaumont, Houston, and Galveston, and commodity rates to Orange, Beaumont, and points taking same rates, found justified. The readjustment of the class rates requires that some commodity rates must be changed to preserve a more just relationship. The scale of class rates now in effect is a depressed scale. New Orleans-Texas Rates, 1, 8, 10.

Class rates: That an increase is made over a rate reduced because of conditions produced by the act of a state and that the increased rate is but a restoration of former rates are circumstances to be considered in determining whether or not carriers have met the burden of justifying rates increased since January 1, 1910. La Crosse Shippers' Asso. v. C. & N. W. Ry. Co. 453 (455).

Class rates: Rates from La Crosse, Wis., to various Minnesota points not found unreasonable, and rates increased since January 1, 1910, found justified. *Id.* (458).

Class rates: Increased rates between Danville, Va., and points in North Carolina found justified. To withhold approval of rates found reasonable and in harmony with the general interstate adjustment in this territory, solely on the ground that when they become effective Danville will be at a disadvantage because of lower state rates enjoyed by North Carolina points, would put both carriers and this Commission under control of state authorities in many cases involving interstate rates. Danville, Va., Class and Commodity Rates, 742 (745).

ADVANCE IN RATES—Continued.

Coal, bituminous: Increased rates which merely preserve the previous relationship between the rates from the two groups of southern Illinois mines, found justified. Rate Increases in Western Classification Territory, 94 (96-97).

Colled elm hoops: Increased rate from Chaffee, Mo., to Thebes, Ill., found not justified. Rate comparisons and fact that the relationship between the St. L. & S. F. and C. & E. I. railroads has been severed, with the result that the haul from Chaffee to Thebes is over two distinct lines, does not warrant a departure from previous finding. Hoops from Chaffee, Mo. 482 (483-484).

Coke: Cancellation of an interstate commodity rate on gas coke from St. Charles, Mo., to St. Louis, Mo., not justified. Rate Increases in Western Classification Territory, 94 (97).

Crushed stone and related articles: Increased rates found to have been justified in part only. Crushed stone is a low-grade commodity, which loads well. Lower rates than those proposed found reasonable to less distant stations, and order of suspension vacated in so far as the more distant stations are concerned. Stone from Illinois Points, 389.

Dressed beef: Cancellation of commodity rates on "dressed beef cuts" from New York, N. Y., and other Atlantic seaboard cities to St. Louis, Mo., leaving third-class rates effective in their stead, found justified. The third-class rates are in harmony with the general adjustment of rates westbound. Dressed Beef from New York, N. Y., 51.

Fire brick: Increased rates from Malvern and Perla, Ark., to Louisiana points not justified. Rates cited in comparison indicate that present rates involved are not unreasonably low. Fire Brick to Louisiana Points, 249 (251).

Fresh meat and packing-house products: Suspended schedules proposing certain increased rates between points in central freight association territory ordered canceled, but without prejudice to the filing of new tariffs. Fresh Meat and Packing-House Product Rates, 665 (668).

Fruits, vegetables, and strawberries: Increased rates, any quantity, from St. Julian avenue station, Norfolk, Va., to New York, N. Y., not justified. The purchase of an additional terminal under circumstances disclosed does not justify proposed rates. Fruits and Vegetables from Norfolk, Va. 252 (256).

Hides, green salted: Increased rate from St. Paul, Minneapolis, and Minnesota Transfer, Minn., to Boston, Mass., and Boston rate points, via Sault Ste. Marie, Mich., not justified. Respondents presented no witness and no testimony on deposition. Hides to Boston, Mass. 194.

Iron and steel articles: Increased rates from north Pacific coast points to points in Oregon, Washington, and Idaho, found not justified. The fact that there is a commodity rate on the articles in question lower than rates on other iron articles rated fifth class is not of itself convincing that the rate in question is unduly low and should be increased. Iron and Steel from Pacific Coast Points, 545, 548.

Iron and steel, sheet: Increased rates from eastern defined territories to Spokane, Wash., found to be in violation of Fourth Section Order No. 124, and therefore not justified. Rates on Iron and Steel Articles to Spokane, 669.

ADVANCE IN RATES—Continued.

- Lumber and lumber products:** Increased rate from St. Paul, Minneapolis, Duluth, Minnesota Transfer, and Stillwater, Minn., and Ashland, Wis., and points taking same rates, to Chicago and Chicago rate points justified. Former rate is lower than lumber rates in other parts of the country generally for similar distances and was made to meet water competition. Lumber between Points in Western Trunk Line Territory, 370 (374, 376).
- Marble:** Increased rate on marble, sawed, hammered, chiseled, or dressed, from Rutland, Vt., and points taking same rates, to St. Paul, Minn., and points taking same rates, via lines forming the Union Line route, which was intended to restore parity with rates by other routes, found justified; but the proposed through rate on rough quarried marble exceeds the aggregate of intermediates and is unlawful. Marble from Rutland, Vt. 13.
- Matches:** Cancellation of commodity rates from Duluth, Minn., to points in Arkansas found not justified. Protestants adduced considerable testimony to prove that rates sought to be canceled are reasonable and properly adjusted relatively to rates from competitive points. Matches from Duluth, 103 (104).
- Paper, miscellaneous:** Increased rates on printing paper, wrapping paper, blotting paper, cardboard, tag board, paper bags, and blank register paper, equivalent to the sixth-class rates, increased for the purpose of removing inequalities and inconsistencies in the rate adjustment, found to be reasonable, but certain departures from the sixth-class basis disapproved. Official Classification Rates on Paper, 120, 123.
- Paper, newsprint:** Increased rates from Alexandria, Ind., and Cheboygan, Mich., to eastern points, not justified. Id. (129).
- Paper, newsprint:** Increase in the blanket rate from New England and northern New York to points in central freight association territory not justified to extent proposed, but rate of 20 cents found to be reasonable. Carriers permitted to increase rates on blank wall paper to same basis as that approved on newsprint paper. Id. (129, 148).
- Paper boards:** Increased rates on strawboard, paper boards, and building and roofing paper, not justified. Evidence does not show that past rates on paper boards have proved unremunerative. Rates on paper boards and strawboards are less than sixth class, the reasons, as given by carriers' witnesses, being that paper boards and strawboard are readily distinguishable from other kinds of paper, and that as a general rule their values are lower. Same reasoning applies to building and roofing papers. Id. (143, 144).
- Salt, rock:** Defendants fail to sustain the burden of proof to show that the rate from Louisiana points to Fort Worth and North Fort Worth, Tex., increased on January 1, 1915, is reasonable. Maintenance of former rate as maximum required. *Swift & Co. v. M. L. & T. R. R. & S. S. Co.* 242 (244).
- Sand and gravel:** Increased rates from Lake Erie ports to various points in central freight association territory not justified. Carrier expressed its willingness to continue rates now in effect. Increased rates from Tecumseh, Mich., to certain points in Ohio on the Detroit, Toledo & Ironton Railroad justified. Distance, loading, and per car, per car-mile, and per ton-mile revenue considered. Central Freight Association Sand and Gravel Rates, 196, 197.

ADVANCE IN RATES—Continued.

Wheat and corn: Increased rates between stations on the Memphis and St. Louis division of the St. L. & S. F. and Memphis, Tenn., justified. These were not protested. Rate Increases in Western Classification Territory, 94 (97).

ADVANTAGES AND DISADVANTAGES. See also EQUALIZING RATES; LOCATION.

Carriers are under no obligation to establish less than reasonable rates for the purpose of overcoming any disadvantage Memphis may suffer by reason of greater distance from the source of supply; but they may not deny to the Memphis manufacturer the right to compete with Arkansas mill operators by maintaining unjustly discriminatory rates. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (437).

In eastern trunk line territory complainant paper mills in Michigan have practically the same advantage over their Wisconsin competitors which in western trunk line territory the Wisconsin mills have over complainants. *Michigan Paper Mills Traffic Assn. v. A. & V. Ry. Co.* 517 (525).

ADVERTISING.

Competition between advertisers is also said to be severe, and there has been such a marked decline in the amount of advertising space sold during the past year that publishers consider it impossible to increase advertising rates at the present time. *Official Classification Rates on Paper*, 120 (128).

AGREED RATES.

Reparation denied where claim for reparation was based solely on an alleged agreement by defendant before shipments moved to publish a certain rate and failure to keep its promise. *Pacific Bridge Co. v. S., P. & S. Ry. Co.* 732.

ALLOWANCES. See also ELEVATORS.

Any allowance to the Altoona and Glen White companies in excess of 8 cents per net ton for moving coal or coke from their mines and coke ovens to defendant's rails was unreasonable, unlawful, and unjustly discriminatory. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (50).

The mere fact that the Big Four voluntarily made an allowance during considerable periods in the past establishes no right in the stone companies to require such allowance to be continued. An allowance of \$1 per car would not appear to be excessive for services performed by the stone companies over the spurs of the Big Four. *Westport Stone Co. and Big Four Stone Co. Case*, 316 (319).

The Muncie & Western is a common carrier to which connecting lines may make allowances for switching services. In re *Muncie & Western R. R. Co.*, 510.

Cancellation of weight allowances for dunnage and of money allowances for inside car doors used in shipping cans found justified. *Continental Can Co. v. B. & O. R. R. Co.* 618.

ALTERNATIVE CLAUSE.

Provision by, for application of either class or commodity rate, whichever makes lower. *New Orleans Joint Traffic Bureau v. M. L. & T. R. R. & S. S. Co.* 11.

Tariff rule governing the alternative use of class and commodity rates, permitted such use only when same were contained in the one tariff. Class rates and potato rates involved were in different tariffs. *Kuehne-Chastain Commission Co. v. G. B. & W. R. R. Co.* 87 (89-90).

AMBIGUOUS TARIFF. *See* **TARIFFS.**

ANALOGOUS ARTICLES. *See also* **COMPARATIVE RATES.**

Wrapping paper is similar to printing paper; and rates on both kinds should be the same. *Official Classification Rates on Paper*, 120 (146).

ANNUAL REPORTS.

Comparison of tonnage and population in territories immediately north and south of the Ohio River compiled from twenty-fourth and twenty-fifth annual reports of the Commission. *Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (490).

ARBITRARIES.

On paper to Philadelphia, Baltimore, Washington, and Richmond the arbitraries are not the same on paper originating in northern New York as on that originating in New England. No finding as to propriety of this adjustment is made. *Official Classification Rates on Paper*, 120 (149).

Contention that it is unreasonable to construct the rate on yellow-pine lumber from Akron, Ala., to Richelleu, Quebec, by addition of a 6-cent arbitrary over Montreal, not sustained. *Prendergast Co. v. A. G. S. R. R. Co.* 361.

ASSIGNMENT.

Fruit Growers' Association of Hood River, Oreg., shipped fruits and berries to Winnipeg and Brandon, Manitoba. Both consignees assigned their interest in claims to complainant who apparently was a stranger to defendants' transportation records relative to shipments and who therefore is not entitled to reparation. *Robinson Co. v. Am. Exp. Co.* 733 (785).

AUCTION COMPANY.

That a carrier may contract with one agency to the exclusion of others for the performance of a function which is not transportation is established; and such arrangement does not, of itself, suffice to establish a charge of undue or unreasonable preference or advantage; nor does the mere fact that certain stockholders in the Union Fruit Auction Company are receivers of fruit necessarily constitute undue discrimination against receivers of fruit not interested in the auction. *Andrews Bros. Co. v. P. R. R. Co.* 165 (167).

Auction company to be required to publish, post, and adhere to rules and rates of Commission governing auction sales. *Id.* (168).

BACK HAUL. *See* **RECONSIGNMENT.**

BASING RATE.

The "key" rate from coal mines in Colorado and Wyoming to stations on and west of the Missouri River is the rate from Walsenburg. *Northern Colorado Coal Co. v. C., W. & E. Ry. Co.* 73 (76).

BILL OF LADING.

Complainants' tonnage not sufficient to warrant refrigerator or heated car service, and notation on bills of lading exempting carriers from damage caused by freezing not found unlawful. *Longo Fruit Co. v. I. T. System*, 487 (489).

Contention that shipment of pickles and machinery and other articles, forwarded as separate less-than-carload shipments under two bills of lading because pickles were inadvertently loaded into wrong car, should have been covered by one bill of lading and accorded the carload rate, not sustained. *Sheldon & Co. v. Wabash R. R. Co.* 569 (570).

BILLING. *See also* MISDESCRIPTION.

Billing for rough sectional boiler castings was changed by carriers' inspectors to read "heating furnace parts." Rates on castings and forgings n. o. i. b. n. were properly applicable. Reparation awarded. *Englehart Heating Co. v. N., C. & St. L. Ry.* 685.

BLANKET RATES.

Rates on coal from Colorado and Wyoming mines to stations in Kansas and Nebraska, both as to points of origin and points of destination, have been blanketed, the carriers disregarding differences in distance amounting to hundreds of miles, and similarly ignoring differences in operating conditions. *Northern Colorado Coal Co. v. C., W. & E. Ry. Co.* 73 (76).

A reasonable base rate from points in the so-called news print blanket which extends over New England and northern New York will not, for the future, exceed 20 cents. Evidence insufficient to warrant a division of the news print blanket. *Official Classification Rates on Paper*, 120 (129).

The 23-cent blanket rate applicable to wooden building materials from Oklahoma City to numerous points in Texas was found unreasonable, to all points in Texas common-point territory to the extent that it exceeded 21.5 cents, in a former proceeding, 36 I. C. C., 329; and it is not shown that the basis of rates prescribed therein should be modified. *Curtis & Gartside Co. v. A., T. & S. F. Ry. Co.* 276 (277).

Carriers, in blanketing a given territory under a common rate, must avoid unjust discrimination. The boundaries of a blanket should not be so drawn as to include within it a large number of producing points while other points similarly situated are excluded, especially when the area of production has clearly defined geographical limits. *Scott v. C. C. R. R. Co.* 467 (471).

BOAT LINES. *See also* PANAMA CANAL: THROUGH ROUTES AND JOINT RATES.

Operating between St. Louis-East St. Louis and Ohio River crossings. Waterways throughout territory involved afford not only potential competition, but actual competition. Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 411 (418).

In view of the revisions in rates and divisions thereof made by petitioners and steamship company it is held that continued ownership and operation of the steamship company by petitioners will neither exclude, prevent, nor reduce competition on the route by water, and that applications should be granted. *Peninsular & Occidental S. S. Co.* 662.

BOTH DIRECTIONS.

In dealing with rates westbound respondents admit that news print paper is less valuable than printing paper, that it is readily distinguishable from other kinds of paper, and that it is entitled to rates somewhat lower. Same reasoning should apply to rates in the opposite direction. *Official Classification Rates on Paper*, 120 (129).

Adjustment of sixth-class rate eastbound and westbound is of long standing, and a departure from it is not warranted. *Id.* (133).

Lower rates apply on packing-house products from Texas to Mason City, Iowa, than in opposite direction or from Texas to Milwaukee. Rates from Mason City to Texas are higher than from Milwaukee. Rates from Mason City to Arkansas and Texas points not found unreasonable. *Decker & Sons v. M. & St. L. R. R. Co.* 228 (229, 230).

BOTH DIRECTIONS—Continued.

The maintenance of a higher rate on coal from Kankakee to Chicago, Ill., than in the opposite direction between same points does not warrant condemnation of rate charged. *Holverscheld & Co. v. L. V. R. R. Co.* 495 (496).

BRANDING IN TRANSIT. See also TRANSIT PRIVILEGES.

The publication of transit service at Clearmont, Wyo., after shipments moved does not prove that the absence of such service before was unreasonable. *Zimmerman v. C., R. I. & P. Ry. Co.* 118 (119).

BRIDGE TOLL.

Evidence regarding cost of service and other matters affecting the reasonableness of the charge does not justify a finding that the addition of a bridge toll results in unreasonable rates between points west of the river and Memphis. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (433).

BROKERS.

The duty imposed by the act upon common carriers not to discriminate unjustly between persons undoubtedly is owed only to patrons of carriers as such, and carriers owe no duty not to discriminate between customs brokers merely as brokers. *Emery & Co. v. B. & M. R. R.* 636 (637).

That occupy the position of shippers and patrons of carrier's transportation service are entitled to nondiscriminatory treatment from carrier both in respect of services which it is bound to perform for shippers and of any services which it may volunteer. *Id.* (637-638).

BULKHEAD. See MIXED CARLOADS.**BULKY ARTICLES.**

Exception is ordered to the uniform minimum charge rule applicable to long or bulky articles prescribed in the original report herein, 33 I. C. C., 378, when shipments contain articles over 22 feet long and not exceeding 12 inches in diameter or other dimension. *Minimum Charges on Bulky Articles*, 257.

Exception of plate glass and tanks used for watering troughs from application of uniform minimum charge rule, not warranted. *Id.* (259, 260).

It appears that 22 feet is the maximum length of a rigid article that can be loaded into an ordinary 36-foot box car through the center side door thereof without the use of the end window. *Id.* (261).

BUNCHING. See also FREE TIME.

The facts in this case suggest no difference in principle underlying free demurrage time and free storage time with respect to the application of a bunching rule, but this conclusion is not for general application. *Commercial Exchange of Philadelphia v. P. R. R. Co.* 320 (325).

Although not put in issue by the complaint, special conditions existing at Baltimore indicate that defendants ought to make allowance in their rules to cover delays due to bunching by carriers of cars in transit. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 326 (327).

BURDEN OF PROOF.

Respondents presented no witness and no testimony on deposition, and showing not regarded as satisfactorily discharging the burden cast upon them to justify proposed rates involved. *Hides to Boston, Mass.* 194, 195.

"BURNT DISTRICT."

Referred to. *Through Rates to Points in Louisiana and Texas*, 153 (157).

BUSINESS POLICY. See MONOPOLY.

CANADA.

Traffic from Canada to the United States is as much within our jurisdiction to extent of its movement within the United States as traffic from over seas or from one state to another. *Emery & Co. v. B. & M. R. R.* 636 (637).

CANAL.

Rates on bituminous coal to Alexandria and Washington are practically controlled by canal rates. *Bennett & Son v. C. & O. Ry. Co.* 310 (312).

CANCELLATION.

No justification of cancellation of through rates on packing-house products and fresh meats was offered and suspended tariffs ordered canceled, but without prejudice to consideration of questions presented in Docket 8436. Rate Increases in Western Classification Territory, 94 (95).

Cancellation of joint rates not justified. Lumber to C., M. & St. P. Ry. Stations, 587.

CAR FITTING.

Withdrawal of allowances for inside doors furnished for protection of bulk shipments in box cars found justified. *Continental Can Co. v. B. & O. R. R. Co.* 618.

CAR FURNISHING.

Section 1 requires carriers to furnish refrigerator cars upon reasonable request therefor. Complainants' tonnage does not appear to be sufficient to warrant refrigerator or heated car service. *Longo Fruit Co. v. I. T. System*, 487 (489).

CARLOAD AND LESS THAN CARLOAD.

Carload and less-than-carload rate adjustment on condensed and evaporated milk in cans, boxed, in and between eastern trunk line and New England territories, from these territories to central freight association territory, and from central freight association territory to New England territory, held unjustly discriminatory. *Hires Condensed Milk Co. v. P. R. R. Co.* 441 (443).

Rates in official classification territory on condensed or evaporated milk held unreasonable and rates no higher than rates applicable under rule 26, less than carload, and fifth class with a 36,000-pound minimum, carload, prescribed. Reparation awarded on l. c. l. shipments. *Id.* (447).

Less-than-carload rates from Michigan paper mills not found unduly prejudicial as compared with those from Wisconsin mills. *Michigan Paper Mills Traffic Assn. v. A. & V. Ry. Co.* 517 (523).

Rates not in excess of fourth class, subject to Illinois classification, for transportation of iron or steel locks with or without brass or bronze trimmings in straight or mixed carloads prescribed. *United States Steel Lock Co. v. C., M. & St. P. Ry. Co.* 542.

Rate on buggy bodies, in the white, in less than carloads, from St. Louis, Mo., to Marshalltown, Iowa, not found unreasonable as compared with a commodity rate on buggies, less than carload, knocked down or boxed or crated. *Marshalltown Buggy Co. v. C., B. & Q. R. R. Co.* 634.

CAR-MILE EARNINGS. See EARNINGS.**CAR NUMBER.**

Lumber shipped from Hertford, N. C., to Atlantic City, N. J., was ordered diverted to Tom's River, N. J., but the notice to divert contained the erroneous car number noted on the bill of lading by the consignor, and carriers will not be required to refund additional charges resulting from shipper's error. *Woodland Lumber Co. v. N. S. R. R. Co.* 709.

CAR SIZE.

Carrier may not impose additional transportation charges on a shipper who orders a car of a capacity, length, or dimension specified in carrier's tariff simply because carrier is not provided with cars of dimensions ordered. *Lippard-Stewart Motor Car Co. v. M. C. R. R. Co.* 112 (113).

CASHMAN AOT.

Referred to. *Fargo Foundry Co. v. N. P. Ry. Co.* 693.

CIRCUITOUS ROUTE.

Cancellation of a 60-cent rate for a three-line haul over a circuitous route, leaving higher rate applicable, found justified. *Mission Brewing Co. v. A., T. & S. F. Ry. Co.* 171 (172).

Southern Railway granted fourth section relief via its circuitous route through Booneville, Ind., to meet the water competitive rate established at Evansville. *Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (422).

It is expected that circuitous routes, both north and south of the Ohio River, will refrain from continuing departures from the fourth section in cases where there is an unreasonably great disparity between the distances via their routes and the distances via the short lines. *Id.* (426, 428).

CLAIM. See LIMITATION OF ACTION.**CLASS AND COMMODITY RATES.**

The readjustment of the class rates requires that some commodity rates must be changed to preserve a more just relationship. *New Orleans-Texas Rates*, 1 (8).

Commodity rates from New Orleans to Orange, Beaumont, Houston, and Galveston, and points taking same rates, which are higher than the class rates otherwise applicable, not found unreasonable. Increase in class rates, and provision by an alternative clause in the tariff for application of either the class or commodity rate, whichever makes lower, removes ground of complaint. *New Orleans Joint Traffic Bureau v. M. L. & T. R. R. & S. S. Co.* 11.

Record reveals no reason why rates on dressed beef cuts to St. Louis should be on a different basis than rates on same commodity from same points of production in same direction to same general territory of destination. Third-class rates, effective upon cancellation of commodity rates here involved, are in harmony with the general adjustment of rates westbound. *Dressed Beef from New York*, N. Y. 51 (54).

Charges collected on potatoes from Wisconsin points to destinations in Missouri and Kansas on basis of a commodity rate were not unlawful. The tariffs permitted the alternative use of class and commodity rates only when same were contained in one tariff; but in this case the class rates and potato rates were in different tariffs. *Kuehne-Chastain Commission Co. v. G. B. & W. R. R. Co.* 87 (89-90).

The publication of a multitude of commodity rates in order to avoid the maintenance of class rates which exceed the aggregates of intermediate rates is not desirable. *Through Rates to Points in Louisiana and Texas*, 153 (160).

Commodity rate on feed-water heaters from Camden, N. J., to Jacksonville, Fla., higher than the class rate applicable on same articles between same points, not found unreasonable. *Webster & Co. v. P. & R. Ry. Co.* 499.

CLASS AND COMMODITY RATES—Continued.

The fact that there is a commodity rate on the articles in question lower than rates on other iron articles rated fifth class is not of itself convincing that the rate in question is unduly low and should be increased. *Iron and Steel from Pacific Coast Points*, 545 (548).

A reasonable list of commodity rates should be established to Washington on a basis lower than existing class rates. Interested carriers given 60 days to readjust their commodity rates to Washington, Fredericksburg, Richmond, and Petersburg in accordance with this report. *Chamber of Commerce of Washington, D. C. v. P. R. R. Co.* 593 (597-598).

Increased class rates between Danville, Va., and North Carolina points found justified. State and interstate class scales compared. *Danville, Va., Class and Commodity Rates*, 742 (743, 744).

CLASS RATES.

If class rates from the so-called Williamsport-Cumberland group to points in central freight association territory are unreasonably high, that fact should be brought to the attention of the Commission in another proceeding. *Official Classification Rates on Paper*, 120 (136).

Willingness of defendants to establish rates on surface-coated printing paper from Saugerties, N. Y., to points in trunk line territory and New England equivalent to the sixth-class rates, fairly meets issues of complaint. *Cantine Co. v. C., H. & D. Ry. Co.* 151 (152).

First-class rating and rates on carburetors from Chicago and Indianapolis to Pacific coast points prescribed as maximum. *Weinstock-Nichols Co. v. C., C. & St. L. Ry. Co.* 288.

First-class rating on mousetraps not found unreasonable. *Johnston & Sharpe Mfg. Co. v. C., R. I. & P. Ry. Co.* 343.

First-class rate assessed on automobile gear frame side bars from North Milwaukee to St. Louis found unreasonable and reparation awarded on basis of third class. *Dorris Motor Car Co. v. Wabash R. R. Co.* 503 (504, 505).

Third-class rating of storage batteries in straight carloads not found unreasonable. *Hudson Motor Car Co. v. P. R. R. Co.* 571.

CLASSIFICATION. *See also* ILLINOIS CLASSIFICATION; UNIFORM CLASSIFICATION.

Classification is a rate-making scheme devised for the purpose of according the same rate to all commodities of a like character from a transportation standpoint. Some of the transportation characteristics to be considered in allocating or classifying any commodity are bulk, weight, value, tonnage, risk, liability to damage, cost of carriage, care in handling, loading, competition. *Hires Condensed Milk Co. v. P. R. R. Co.* 441 (447).

Bar iron and steel: It does not follow that bar iron and steel are wrongly classified simply because articles with different classification elements are included in the same class. *Jackson Chamber of Commerce v. P. & R. Ry. Co.* 233 (235).

Bar iron and steel: Commission expresses no opinion with respect to the reasonableness of the classification of bar iron and steel with reference to the entire territory governed by official classification. *Id.* (235).

Batteries: Third-class rating of storage batteries in carloads from Philadelphia to Detroit not found unreasonable. *Hudson Motor Car Co. v. P. R. R. Co.* 571.

CLASSIFICATION—Continued.

- Bulky articles:** Any classification rule is necessarily arbitrary to a greater or less degree. Minimum Charges on Bulky Articles, 257 (259).
- Bulky articles:** Classification should aim to provide for the most economical movement of freight, and to this end provision should be made for the utilization of equipment other than standard under properly related charges. *Id.* (261).
- Cabinets, pasteboard button:** Inclusion of, in item cabinets, n. o. s., would require the inclusion of many other kinds of pasteboard boxes in same item and a complete revision of classification of paper boxes. Double first-class applied held lawfully applicable. *Pioneer Pearl Button Co. v. C., C., C. & St. L. Ry. Co.* 727 (728).
- Carburetors:** Any rating on carburetors from Chicago and Indianapolis to Pacific coast points in excess of first class will be unreasonable. *Weinstock-Nichols Co. v. C., C., C. & St. L. Ry. Co.* 288 (289).
- Contractor's outfit:** No item of classification or tariffs provided a carload rating or rate on a mixture of commodities embraced in shipments incorrectly described as contractor's outfit. *Millar v. E. K. Ry. Co.* 573 (574).
- Cylinders:** Change in southern classification rating of returned empty, coppered or nickeled cylinders, from sixth class to fifth class not justified. Classification of Cylinders, 198.
- Cylinders:** Difference proposed in classification of coppered or nickeled cylinders and cylinders not coppered or nickeled is not justified, and no justification appears for rating cylinders involved higher than steel drums or barrels; although there admittedly is more reason for a classification distinction between iron and steel barrels or drums on the one hand and cylinders on the other than between the different types of cylinders. *Id.* (200).
- Fixtures, lightning-rod:** Contention that lightning-rod fixtures should have taken rate applicable to iron and steel articles, including wire, not sustained. *Dodd & Struthers v. P. R. R. Co.* 629 (630).
- Locks:** It is not shown that iron or steel locks and iron or steel locks with brass or bronze trimmings should be rated differently. *United States Steel Lock Co. v. C., M. & St. P. Ry. Co.* 542 (544).
- Milk:** Rates applicable under official classification on condensed and evaporated milk (liquid), in cans, boxed, held unreasonable and rates no higher than rule 26, less than carload, and fifth class with 36,000-pound minimum, carload, prescribed. Reparation awarded on l. c. l. shipments. *Hires Condensed Milk Co. v. P. R. R. Co.* 441.
- Mousetraps** are rated identically in all three general classifications. Complaint is not broad enough to involve any rating other than that applicable in western, and first-class rating on mousetraps from Ottumwa, Iowa, to St. Joseph, Mo., and Atchison, Kans., not found unreasonable, following *Western Classification case*, 25 I. C. C., 442, 541. *Johnston & Sharpe Mfg. Co. v. C., R. I. & P. Ry. Co.* 343.
- Paper:** The fact that the sixth-class basis has been suggested by carriers, and approved by the Commission, upon the record made in justification thereof, as the most logical solution of the many difficulties presented, does not lead necessarily to the conclusion that rates in excess of sixth class are now, and have been, unreasonably high, nor does the evidence establish their unreasonableness. Official Classification Rates on Paper, 120 (149).

CLASSIFICATION—Continued.

Paper: Former conclusion that the maintenance of a uniform basis of rates on paper would effectively eliminate the inconsistencies in the rate structure resulting from lack of a uniform description, reaffirmed. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (529).

Rough sectional boiler castings from Chattanooga, Tenn., to Atlanta, Ga., were not specifically provided for in the governing classification so that rates on castings and forgings not otherwise indexed by name were properly applicable. Reparation awarded. *Englehart Heating Co. v. N. C. & St. L. Ry.* 685 (686).

Side bars or crossbars, automobile: Neither the Illinois nor western classifications carried a specific rating on automobile gear frame side bars or crossbars, so that the double first-class rating in western was applicable. First-class rate assessed on shipment from North Milwaukee to St. Louis found unreasonable, waiver of undercharge authorized, and reparation awarded on basis of the voluntarily established third-class rating. *Dorris Motor Car Co. v. Wabash R. R. Co.* 503 (504, 505).

Territories: When through rates are published from points in one classification territory to points in a territory in which a different classification applies they must be made subject to one or the other of such classifications. Through Rates to Points in Louisiana and Texas, 153 (159).

COMBINATION RATES. *See also* FACTOR.

Combination rate on bar iron from Vincennes, Ind., to Hopkinsville, Ky., not found unreasonable. The testimony was confined to the component from Evansville to Hopkinsville, which was higher than the rate from Evansville to Nashville, to which point Hopkinsville is intermediate. *National Rolling Mill Co. v. C. & E. I. R. R. Co.* 108, 109.

Rates on petroleum and certain of its products from Cowley, Wyo., to Highwood and Coffee Creek, Mont., found unreasonable. The record shows that rates between points in the same general territory are much lower than rates from Cowley to points involved. *Mutual Oil Co. v. C., B. & Q. R. R. Co.* 221 (222, 223).

Combination rate on dry hides by water and rail from New York, N. Y., to Island Falls, Me., found unreasonable. Rate admittedly excessive, and reparation is made on basis of rate subsequently established. *Hunt & Co. v. Bull S. S. Co.* 226.

Lower rates lawfully were applicable on wrought-iron pipe from Wheeling, W. Va., to Wasco, Cal., and points on the Sunset Railway in California over defendants' lines from San Francisco than rates charged from Los Angeles and Stockton, and shipments were overcharged. *Lucey Co. v. A., T. & S. F. Ry. Co.* 264 (265, 266).

Rate on wheat from Hardin, Mont., to Minneapolis, Minn., based on Huntley, Mont., found unreasonable. The rate from Hardin to Huntley was clearly out of proportion to the component beyond Huntley. No violation of the aggregate of intermediates rule found. *McCaull-Dinsmore Co. v. N. P. Ry. Co.* 305 (306).

Combination rate on posts from Remer, Minn., to Benld, Ill., not found unreasonable. The establishment of a joint rate over a different route from route of movement is not enough to condemn the combination rate applicable over route of movement. *Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co.* 338.

Rate on yellow-pine lumber from Akron, Ala., to Richelieu, Quebec, not found unreasonable. *Prendergast Co. v. A. G. S. R. R. Co.* 361.

COMBINATION RATES—Continued. ♦

Joint rates charged on coal from Arkansas points to Onalaska, Tex., and combination rates subsequently made applicable by canceling the joint rates, found unreasonable and reasonable rates prescribed. Reparation awarded. *West Lumber Co. v. St. L. & S. F. R. R. Co.* 401 (404).

Combination rate on lumber from Philip, Miss., to South Bend, Ind., not unreasonable as compared with a lower joint rate via other lines. *Tallahatchie Lumber Co. v. Y. & M. V. R. R. Co.* 501.

Combination through rate on seed potatoes from Seeley Creek, N. Y., to Lemon City, Fla., found unreasonable to extent that the Jacksonville-Lemon City component exceeded the rate of 52 cents per standard sack established since issue was joined. Reparation awarded. *Wilcox v. E. R. R. Co.* 588.

Combination rate on lumber from Weirgor, Wis., to Chicago, Ill., billed originally to Milwaukee, and rebilled thence to Chicago, was lawfully assessed. *Bradley Timber & Railway Supply Co. v. M., St. P. & S. S. M. Ry. Co.* 598.

Rate on coke from Wilkeson, Wash., to Salem, Oreg., found unreasonable, following a former decision in which the component from Portland to Salem was found unreasonable. Reparation awarded on basis of rate subsequently established. *Salem Iron Works v. S. P. Co.* 600.

In the absence of tariff authority for transit service at industries not reached by Union Pacific tracks, that carrier should decline to apply joint through rates. Combination of local rates applied on westbound grain through Kansas City to Kansas destinations not found unlawful. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 682 (684).

COMMODITY RATES. *See also* CLASS AND COMMODITY RATES.

The existence of a commodity rate on sheet-steel pipe, which, if applied, would in some cases result in lower charges on corrugated sheet-steel culverts does not afford a sufficient basis for the establishment of a similar commodity rate on culverts. *Greenburg Iron Co. v. C. & E. I. R. R. Co.* 38 (39).

Cancellation of commodity rates on matches to points in Arkansas found not justified. Matches from Duluth, 103.

Commodity rate higher than class rate not found unreasonable. *Webster & Co. v. P. & R. Ry. Co.* 499.

COMMON CARRIER. *See also* DUTY OF CARRIER.

Muncie & Western held to be a common carrier. In re Muncie & Western R. R. Co. 510 (514).

COMMUTATION FARES.

Charge of \$8 for 100 rides between Steubenville, Ohio, and Follansbee, W. Va., found unreasonable, and a maximum charge of \$3.70 for 52 rides, prescribed. *City of Steubenville, Ohio, v. Tri-State R. & E. Co.* 281 (287).

COMPARATIVE RATES.

Advertising matter entitled to the identical rate applicable on mineral water and ginger ale which it advertised. *Sheboygan Mineral Water Co. v. C. & N. W. Ry. Co.* 491-492.

Brick, fire: Rates are cited on paving brick, which is of approximately the same value as fire brick, from and to various points, and one-line interstate mileage scale rates on fire brick and paving brick also are cited, which indicate that present rates on fire brick from Malvern and Perla, Ark., are not unreasonably low. *Fire Brick to Louisiana Points*, 249 (251).

COMPARATIVE RATES—Continued.

Buggy bodies: Rate on buggy bodies, in the white, in less than carloads, not found unreasonable as compared with rate on buggies, in less than carloads, knocked down and packed. *Marshalltown Buggy Co. v. C. & Q. R. R. Co.* 634 (635).

Carburetors: One and one-half times first-class rating and rates on carburetors from Chicago, Ill., and Indianapolis, Ind., to Pacific coast points found unreasonable. First class prescribed as maximum. Magnetos, generators, and spark plugs are rated first class and take first-class rates, and magnetos and spark plugs apparently are more delicate pieces of machinery than carburetors and more liable to damage in transit. *Weinstock-Nichols Co. v. C., C. & St. L. Ry. Co.* 288 (289).

Coal, blacksmith and soft: Distinction made in rates on blacksmith coal and other soft coal from Chicago, Ill., to Twin Falls, Idaho, not found unjustly discriminatory against blacksmith coal. *Berry Coal & Coke Co. v. C. & N. W. Ry. Co.* 347 (348).

Copper and brass, scrap: Rate on scrap copper and scrap brass in carloads and on scrap brass and slab zinc dross in mixed carloads from Chicago to Milwaukee found unreasonable. Rates on analogous articles of greater value cited in comparison. *Progressive Metal & Refining Co. v. C. & N. W. Ry. Co.* 631.

Crossties: Rates on oak crossties from Cumberland Furnace and Sylvia, Tenn., via Guthrie, Ky., to Nashville, Tenn., found unreasonable to extent that they exceeded rates applicable to oak lumber. *Nashville Tie Co. v. L. & N. R. R. Co.* 689.

Crushed stone: Rates from Graysville, Ga., to Chattanooga, Tenn., and Florida points not found unreasonable as compared with rates on sand, coal, and other commodities between points in same territory. *Catoosa Limestone Products Co. v. W. & A. R. R. Co.* 614 (616).

Culverts: The existence of a commodity rate on sheet-steel pipe from Terre Haute, Ind., to Texas points, which, if it could be applied, would result in lower charges on culverts does not afford a sufficient basis for the establishment of a similar commodity rate on corrugated sheet-steel culverts. *Greenburg Iron Co. v. C. & E. I. R. R. Co.* 38 (39).

Flue lining: Transportation conditions apparently do not demand the same minimum for flue lining as for brick or hollow clay products. *Flue Lining Minimum Weight*, 328 (329).

Logs: The question whether a pine log is a mine prop, a forest product, a saw log, or excelsior material would puzzle even the most expert. Rates on pine mine-prop logs from Thelma and Vaughan, N. C., to Portsmouth, Va., which shall not exceed rates applied on pine saw logs, prescribed. *Rickards v. S. A. L. Ry.* 218 (219, 220).

Logs: Rate found unreasonable and unjustly discriminatory to extent that it exceeded rate on piles and telephone poles. *Sheets v. L. & N. R. R. Co.* 299.

Meat, fresh, and live stock: Question as to the relation of rates on fresh meat to rates on live stock is in issue in a general investigation and should be there determined. *Fresh Meat and Packing-House Product Rates*, 665 (666).

Paper: The uniform application of the sixth-class basis will apparently remove any discrimination as between printing paper and wrapping paper quite as effectively as the valuation plan suggested which proposes to grade rates on paper, other than news print, according to its invoice value. *Official Classification Rates on Paper*, 120 (141).

COMPARATIVE RATES—Continued.

Refuse sirup competes with blackstrap molasses in the manufacture of stock feed, but rates on the latter are influenced by severe competition. No reason appears for a definite relationship between rates on sugar and on sirup. *Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co.* 307 (309).

Retorts, fire-clay: Defendant admits that a higher rate on fire-clay retorts was unreasonable in comparison with rates on draintile and clay products, and on fire clay. Rate found unreasonable to extent that it exceeded a commodity rate subsequently established. *Picher Lead Co. v. M. P. Ry. Co.* 365 (366).

Sand, molding: Rate from St. Paul, Minn., to Fargo, N. Dak., not found unreasonable as compared with rates on crushed stone. Molding sand is more valuable and there is no competition between the two commodities. *Fargo Foundry Co. v. N. P. Ry. Co.* 698 (694).

Sash, doors, and blinds: Whether or not sash, doors, and blinds should take a differential above rates on lumber, not passed upon. *Anson, Gilkey & Hurd Co. v. S. P. Co.* 105 (106).

Shingles, asphalt: Conclusion that rates should be kept on their present basis lest their reduction may lead to a similar reduction in rates on wooden shingles not warranted. Official Classification Rates on Paper, 120 (145).

Wheels: Rates on wooden motor truck wheels, without hubs, from Newark, N. J., and Jackson and Lansing, Mich., to Los Angeles, Cal., found unreasonable to extent that they exceeded rates on wagon wheels in the white, ironed or not ironed, minimum weight not in excess of 30,000 pounds. *Moreland Motor Truck Co. v. S. P., L. A. & S. L. R. R. Co.* 292.

COMPELLED RATES.

Rail rates between water points on Ohio and Mississippi rivers. Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 411 (421).

COMPETING LINES.

Conference Ruling 286 (f) does not require that a carrier shall ascertain whether a competing line can transport a shipment at a lower rate, and, if so, turn the shipment over to its competitor. *Chapin & Co. v. C., I. & L. Ry. Co.* 611 (613).

COMPETITION.

Market:

Paper is produced in large quantities in various parts of official classification territory and competition between manufacturers is unusually keen. Manufacturers in search of wider markets are constantly invading each other's territory. Official Classification Rates on Paper, 120 (121, 130).

There is no competition between building and roofing papers and other kinds of paper involved in this proceeding. *Id.* (144).

Manufacturers of fertilizer at Norfolk, in North Carolina, and in neighboring states are in keen competition with one another. *Royster Guano Co. v. A. O. L. R. R. Co.* 190 (192).

Refuse sirup competes with blackstrap molasses in the manufacture of stock feed, but the rates cited on blackstrap molasses are influenced by severe competition. *Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co.* 307 (309).

COMPETITION—Continued.

Market—Continued.

A carrier has no right, by refusing through routes and joint rates, to dictate to its shippers markets for purchase or sale, or in any other way to restrict fair competition. *Lumber to C. M. & St. P. Ry. Stations*, 587 (589).

Molding sand and crushed stone do not compete. *Fargo Foundry Co. v. N. P. Ry. Co.* 693 (694).

No actual disadvantage to Florida points in competing with south Georgia points is shown, and rates on coal from Birmingham district to Florida points not found unduly discriminatory. *R. R. Comm. of Florida v. C. of G. Ry. Co.* 711 (714).

Port:

In recognizing the effect of Portland's competition on Tacoma and Seattle the carriers may not lawfully overlook the effect of competition of Seattle and Tacoma upon Astoria as a port and harbor. *City of Astoria v. S., P. & S. Ry. Co.* 16 (27).

Rates to the twin cities from the east result from competition through ports of Duluth, Milwaukee, and Chicago, and would not be affected if defendants did not participate in them. *Traffic Bureau, Sioux City Commercial Club, v. G. N. Ry. Co.* 531 (534).

Potential:

The depressed scale of class rates now in effect from New Orleans to Texas points here involved is said to have been named originally to meet water competition. It is shown that no boats have engaged in traffic from New Orleans to Orange and Beaumont for many years. *New Orleans-Texas Rates*, 1 (5, 10).

Competition by the water route between New Orleans and Shreveport is no longer active; and the fact that carriers by rail are seeking authority to increase their state rates between those points is evidence that they no longer regard water competition as potential or controlling. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (59).

Competition of water carriers on the Altamaha and Ocmulgee rivers is potential and operates to restrain rail carriers from increasing rates to Hawkinsville, Ga., to the level of rates to intermediate points. *Shippers of Eastman, Ga., v. S. Ry. Co.* 672 (673).

Rail and boat lines:

Continued ownership and operation of steamship company by petitioners as at present conducted will neither exclude, prevent, nor reduce competition on route by water. *Peninsular & Occidental S. S. Co.* 662 (664).

Wagon:

The Santa Fe lines lost many carloads of wheat in consequence of farmers and shippers draying their wheat across country and shipping it over lines that maintained approximately the same rates to Galveston and to New Orleans. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 33 (35).

Water:

Discrimination may be justified by water competition, subject to the limitation that the discrimination must not exceed the real effect of the competition. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (58).

COMPETITION—Continued.**Water—Continued.**

Nashville is on the Cumberland River and competition on the river affects the rates to Nashville. It has also affected rates on bar iron to Clarksville, Tenn. National Rolling Mill Co. v. C. & E. I. R. R. Co. 108 (109)

The fact that rates to and from intermediate points have been reduced to meet water competitive conditions can not be held to justify the continuance of through rates that exceed the aggregates of intermediate rates. Through Rates to Points in Louisiana and Texas, 153 (163).

Between San Francisco and Los Angeles is said to have some influence on rail rates from San Francisco to points east of Los Angeles. Mission Brewing Co. v. A., T. & S. F. Ry. Co. 171 (173).

Ordinarily the Commission should not, by relief from the fourth section, authorize carriers to go any further in meeting water competition than is necessary to meet the competition afforded by water routes, because to do so would give a permanent advantage to some localities to the disadvantage of competing localities. Rates on Iron and Steel Articles, 237 (240).

Rates on bituminous coal to Alexandria and Washington are practically controlled by rates by way of the Chesapeake & Ohio Canal, and lower rates to those points than to Culpeper and Manassas, Va., justified. Bennett & Son v. C. & O. Ry. Co. 310 (312, 315).

It can not be maintained that because a carrier has once chosen to make a low rate to meet water competition, it is estopped from thereafter increasing that rate, provided the new rate is just, reasonable, and nondiscriminatory, and requirements of section 4 are observed. Lumber between Points in Western Trunk Line Territory, 370 (376).

Waterways throughout territory involved afford not only potential competition, but actual competition. Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 411 (418).

Water competition on both the Ohio and Mississippi rivers is active and controlling and the rail rates between the water points have been set at a lower level than they might reasonably be were it not for this fact. Id. (421).

Lower rates which are forced by water competition can not be accepted as a measure of reasonableness of rates from or to points where such competition does not exist. Id. (431).

There seems to be merit in contention that rate from Norfolk can not fairly be used as a measure of rates from Cape Charles R. R. Stations where water competition does not exist to same extent as at Norfolk. Scott v. C. C. R. Co. 467 (471).

Water competition at Richmond is somewhat stronger than at Washington, but the difference is insufficient to justify any material difference in freight rates. As to Fredericksburg and Petersburg the showing is even less convincing. Chamber of Commerce of Washington, D. C., v. P. R. R. Co. 593 (597).

Authority to reduce all-rail rates to water competitive points on the Maryland-Delaware peninsula, without observing the long-and-short-haul provision of section 4, denied. Bituminous Coal from Points on Pennsylvania R. R. 658.

COMPETITION—Continued.**Water—Continued.**

Competition of water lines between New York and south Atlantic ports is active and compelling and a very large percentage of business moving between New York and south Atlantic ports moves by water. Shippers of Eastman, Ga., *v. S. Ry. Co.* 672 (673).

COMPLAINT.

Complaint satisfied by publication of rates desired by complainant which defendants, at hearing, agreed to publish. *West Lumber Co. v. M., K. & T. Ry. Co. of Texas*, 746.

CONCURRENCES.

The Frisco's tariff provided for absorption of switching charges to a plant located on the Missouri Pacific. The latter was not a party to this tariff, and its own tariffs specifically provided for the application of road-haul rates. Frisco to refund overcharge. *Chelsea Refining Co. v. M. P. Ry. Co.* 28 (29, 30).

Item in schedule naming increased rate on cottonseed cake and meal from Texas points to Port Arthur, for export, published to show that the Kansas City Southern and Texarkana & Fort Smith railways did not concur in the increased rate, the effect of which was to leave Port Arthur without any joint rates for export in connection with other lines, found not justified. *Cottonseed Products to Port Arthur, Tex.* 378 (381-382).

CONNECTING LINES.

Intermediate connecting line held responsible for misrouting rosin from Snow Hill, N. C., to New York, N. Y., and should settle with its connections on basis of rate legally applicable over route of movement. *Slocomb, Jr., v. C. B. R. Co.* 535, 536.

Reparation awarded against intermediate connecting line on account of misrouting carload of cypress laths from Vacherie, La., to Youngstown, Ohio, and carload of lumber from Plaquemine, La., to Washington C. H., Ohio. *Vacherie Cypress Co. v. T. & P. Ry. Co.* 539.

CONSIGNOR AND CONSIGNEE. *See DISCLOSING INFORMATION.*

CONSTRUCTION OF TARIFF. *See TARIFFS.*

CONSTRUCTIVE MILEAGE.

Accepted constructive water distance from New York, Philadelphia, and Baltimore to Wilmington, Charleston, and Savannah is 250 miles, and from New York to Norfolk, 160 miles. *Ocean-and-Rail Rates to Charlotte, N. C.* 405 (406).

In dividing water-and-rail rates between rail lines and water lines, the water haul from New York and Baltimore to Brunswick, Ga., is considered equivalent to 250 miles of rail haul. *Shippers of Eastman, Ga., v. S. Ry. Co.* 672.

CONTRACT.

Defendants can not use the contract under which the Southern Railway maintains trackage rights to Alexandria and Washington as a shield against the obligation imposed by statute. *Bennett & Son v. C. & O. Ry. Co.* 310 (314).

Commission can give no weight to fact that defendant's practice of absorbing connecting line charges to and from Commonwealth pier at Boston are subject of contract, except in so far as that fact may have evidential bearing upon rates, practices, and status of the carriers. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (647).

CORRESPONDENCE.

Informal correspondence prior to filing of complaint which furnishes no data from which particular shipments may be identified does not stop the running of the statute. *Mutual Oil Co. v. A., T. & S. F. Ry Co.* 591 (592).

COST OF SERVICE.

Allowances in one instance were grossly in excess of the cost of the service, and included very appreciable profit. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (48).

Refrigeration charges are higher on melons than on other vegetables and fruits because melons retain a greater quantity of "field heat" and require more ice. *Melon Refrigeration Charges*, 62 (63).

It does not necessarily follow that the cost of an average industrial switching movement and all services incident thereto would fairly represent a mathematically determined percentage of the cost of an average reweighing movement. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (83).

Movement of long freight on open cars is more expensive because of the greater empty return movement and the lighter loading of the cars, both together justifying the application of a minimum charge rule. *Minimum Charges on Bulky Articles*, 257 (261).

The time has arrived when carriers can not afford to treat with indifference the cost of services which they perform. *Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. Co.* 551 (557).

COURT PROCEEDINGS.

Should suspended tariffs become immediately effective collection of rates thereunder will be in violation of the injunction issued by the supreme court of Massachusetts, and carrier asks that the effective date be delayed until further proceedings may be had before that court. Action of court can not be anticipated and delay is not warranted. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (656).

CREDIT.

Demurrage charges which accrued because carrier refused to deliver shipments to switching line until charges were paid, found unlawful. Record discloses that complainant's credit became bad because of rumors concerning its financial standing which were subsequently found to be groundless. *National Clay Works v. M. & St. L. R. R. Co.* 353.

CROP FAILURE.

Westbound movement of grain to Kansas points due to a failure of the crop in Kansas, referred to. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 682 (683).

CUSTOMS BROKERS. See BROKERS.**DAMAGES. See also ADMISSION; PARTIES; SUBSEQUENTLY-ESTABLISHED RATES.**

Freight charges paid by complainant were allowed on face of invoice and were deducted from delivered purchase price. Complainant would not be entitled to reparation even if rates assailed were shown to be unreasonable or discriminatory. *Advance Bedding Co. v. A., T. & S. F. Ry. Co.* 31 (32).

Denied because there was no evidence of record that Texarkana shippers were damaged as a result of the rate advantage of Shreveport. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (60).

DAMAGES—Continued.

No reparation can be awarded until complainant establishes its right thereto. *Lippard-Stewart Motor Car Co. v. M. C. R. R. Co.* 112 (114).

Rates assailed are not shown to be unreasonable *per se* and no reparation should be awarded. *Official Classification Rates on Paper*, 120 (149).

It would obviously be unfair to hold that the uniform basis finally chosen for the purpose of eliminating existing inequalities and inconsistencies should also be used by shippers as a basis for obtaining refunds of charges paid before the readjustment took place. *Id.* (149).

Denied for reasons stated in *Official Classification Rates on Paper*, 38 I. C. C., 120, 149. *Cantine Co. v. C., H. & D. Ry. Co.* 151 (152).

Rate and minimum applied on shipments of grapefruit and oranges from Jacksonville, Fla., to Montana points found unreasonable. Reparation awarded on supplemental hearing. *Lindsay & Co. v. N. P. Ry. Co.* 187.

Damage alleged to have been caused by rates condemned is not established. *Decker & Sons v. M. & St. L. R. R. Co.* 228 (231).

Awarded on account of unreasonable loading charges on paper at Portland, Oreg. *Crown-Columbia Paper Co. v. O.-W. R. R. & N. Co.* 231.

A finding of damage can not be based on defendants' failure to maintain what complainant considers a reasonable joint rate over some other and more direct routes. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 278 (280).

Original report on rehearing awarding reparation on lumber from points in Arkansas, Louisiana, and Texas, adhered to. *Caddo River Lumber Co. v. C. & C. R. R.* 390.

Case in which reparation on account of unreasonable rates was denied reopened and reparation awarded. *Federal Glass Co. v. C., R. I. & P. Ry. Co.* 331.

Commission's refusal in some cases to award reparation where an existing rate has been found unreasonable has not conflicted with the principle that "the party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable," for a rate which is unreasonable when a case is heard or decided may not have been unreasonable when the shipments moved. *Id.* 331-332.

Question of reparation held in abeyance for determination in a supplemental proceeding. *Meeker & Co. v. C. R. R. Co. of N. J.* 333.

No one with personal knowledge of facts appeared at hearing and bill of lading shows that complainant was neither consignor nor consignee. Reparation denied. *Phillips Coal Co. v. S. A. & A. P. Ry. Co.* 340.

From a finding that a rate at the present time is unreasonable, it does not necessarily follow that such a rate has been unreasonable in the past; and where reparation is claimed because of an unreasonable rate, it is incumbent upon the Commission to enter upon a further consideration of whether or not the rate has in the past been unreasonable, and if so, to what extent and for what period. *Hires Condensed Milk Co. v. P. R. R. Co.* 441 (447, 448).

Finding of damages can not be based on general allegations or statements. *Wells Lumber Co. v. C., M. & St. P. Ry. Co.* 464 (466).

A mere willingness to pay reparation without evidence that the rate charged was unreasonable is not sufficient upon which to base an award of reparation. *Elden v. S. P. Co.* 530.

DAMAGES—Continued.

Reparation, claimed on account of discrimination, denied for want of proof of damage. Evidence shows that complainants lost business on account of the difference in freight rates, but also shows that competition, contributed to the loss; and it is impossible to determine the relative effects of the two causes or what pecuniary loss resulted from loss of business. *California Corrugated Culvert Co. v. A. G. S. R. R. Co.* 568.

No reparation can be awarded on account of departures from the long-and-short-haul rule where oats and corn from Omaha to Arizona points moved after the application of the lower joint rate to Los Angeles and rate charged was not found unreasonable or unjustly discriminatory. *Uplike Elevator Co. v. C., R. I. & P. Ry. Co.* 687 (688).

In order to hold a carrier or carriers responsible in damages for unjust discrimination it must be affirmatively established that traffic actually moved at the lower rate from point alleged to have been unlawfully favored over line of carrier or carriers responsible for the discrimination. *Greenbaum Co. v. S. Ry. Co.* 715 (718).

Notwithstanding carriers' admissions for purposes of informal proceedings, complainant is under burden of proving rates assailed to be unreasonable; and evidence offered by counsel who had no personal knowledge of the facts held incompetent. *Joseph Bros. & Co. v. M. O. R. R. Co.* 719 (720).

The fact that switching charges were not absorbed until after shipments moved, without additional evidence to show that rate charged was unreasonable, does not afford a sufficient basis for an award of reparation. *Garden City Sand Co. v. N. Y., C. & St. L. R. R. Co.* 723 (724).

Agreed rates: Claim for reparation is based solely on an alleged agreement by defendant to publish a certain rate and its failure to do so. Reparation can not be awarded by this Commission except for damage arising from violation of the act. *Pacific Bridge Co. v. S., P. & S. Ry. Co.* 732.

DANGEROUS ARTICLES. See Risk.**DELIVERY.**

Tariffs did not provide for payment of freight and demurrage charges as a prerequisite to release of cars to switching line. Demurrage charges found unlawful. *National Clay Works v. M. & St. L. R. R. Co.* 353 (354).

DEMURRAGE.

Demurrage charges collected on coal held for reconsignment at Frankfort, Mich., due to inadvertent cancellation of free-time provision, found unreasonable and reparation awarded. *Reiss Coal Co. v. A. A. R. R. Co.* 337.

Tariffs did not provide for payment of freight and demurrage charges as a prerequisite to release of cars to switching line, and charges at Mason City, Iowa, on coal from Panama and Harrisburg, Ill., found unlawful. *National Clay Works v. M. & St. L. R. R. Co.* 353 (354).

DENSITY OF TRAFFIC.

Tonnage over lines named is dense in vicinity of Oklahoma City. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.* 392 (394).

Comparison of tonnage and population in territories immediately north and south of the Ohio River. More favorable traffic conditions obtain north of the river. *Glass and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (430).

DIFFERENTIALS.

Rates on wheat from points on lines of the Santa Fe in Oklahoma to New Orleans should not exceed the rates to Galveston by more than 5 cents per 100 pounds. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 83 (86).

Rates on tropical fruits from New Orleans to Texarkana found unduly prejudicial to extent they exceed by more than 10 cents per 100 pounds the rates to Shreveport. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (80).

Propriety of adjustment of rates on sash and doors which embodies differentials above the rates on lumber not passed upon. *Anson, Gilkey & Hurd Co. v. S. P. Co.* 105 (106-107).

Table showing differentials used in constructing rates to points in Texas common-point territory which are to be added to or deducted from rate in effect from St. Louis. *Through Rates to Points in Louisiana and Texas*, 158 (155).

Rates on bituminous coal from South Canon, Colo., to points in Kansas, Nebraska, South Dakota, and Wyoming on certain lines will not, for the future, exceed rates from the Walsenburg district by more than 25 cents per net ton. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (182).

In cases involving a transcontinental rate situation with an abnormally depressed through rate, a departure from the recognized rule of diminution of differentials with distance and of proportionate differentials to related points may be justified. The differences in differentials are merely incidents, or accidents, growing out of carriers' lawful but limited rights to meet competition of carriers and to recognize certain commercial conditions. *Cast-Iron Pipe from North Carolina Points*, 183 (186).

On packing-house products from Mason City, Iowa, there appears to be no justification for greater differentials on shipments to Louisiana than on shipments to Arkansas. *Decker & Sons v. M. & St. L. R. R. Co.* 228 (231).

No reason appears for a definite relationship between rates on sugar and on sirup. *Kornfaul Feed Milling Co. v. A., T. & S. F. Ry. Co.* 307 (309).

Rate on paper from Kalamazoo, Mich., to New Orleans, La., not more than 2 cents per 100 pounds higher than rate from Wisconsin mills, prescribed. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (526).

DISCLOSING INFORMATION.

A carrier ought not on any ground to disclose the information it acquires by virtue of its agency for others in the service of carriage; and freight bill upon a reconsigned shipment must not show name of original consignor, except with consent of original consignee, and must not show point of origin or routing except when ultimate consignee is called upon to pay the through charges. In the *Matter of Freight Bills*, 91 (92, 93).

DISCRIMINATION. *See also PREFERENCES AND PREJUDICES.*

The mere maintenance of higher rates to one point than to another is not an unjust discrimination; it is only when general conditions of transportation and the general circumstances surrounding traffic are substantially similar and such a rate relationship adversely affects the commerce of one point and thereby materially benefits the commerce of the other point that it may be said to involve the preferences and discriminations prohibited by law as between different communities served by the same carriers. *City of Astoria v. S., P. & S. Ry. Co.* 16 (24).

DISCRIMINATION—Continued.

An allowance for a service not included in the rate and not authorized by tariff but which was not *ipso facto* unlawful, under statutes then in force, because it was not authorized by tariff, nevertheless was unlawful if the practice resulted in unjust discrimination or unreasonable advantage or preference. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (44).

Discrimination may be justified by water competition, subject to the limitation that the discrimination must not exceed the real effect of the competition. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (58).

Rates may be reasonable *per se* and yet unlawful because of their unduly discriminatory character. *Through Rates to Points in Louisiana and Texas*, 153 (162).

Commission can not require the removal of discrimination unless it is found to be unjust. *Cast-Iron Pipe from North Carolina Points*, 183 (186).

If rates are relatively unjust, so that an undue preference accrues under them to one person or locality, the law is violated, although the higher rates are not in themselves unreasonable. *Bennett & Son v. C. & O. Ry. Co.* 310 (313).

The prohibition of the statute against discrimination which is unjust confers the right to exercise a reasonable judgment as to whether such discrimination is within the inhibitory clause. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 458 (463).

Duty imposed by act upon common carriers not to discriminate unjustly between persons undoubtedly is owed only to patrons of carriers as such, and carriers owe no duty not to discriminate between customs brokers merely as brokers. *Emery & Co. v. B. & M. R. R.* 636 (637).

The test of unlawful discrimination is the ability of one or more of the carriers participating in through routes to remove the discrimination by their own acts. *Commercial Exchange of Philadelphia v. P. R. R. Co.* 675 (678).

DISMISSAL.

Complaint satisfied by publication of rates desired by complainant which defendants, at hearing, agreed to publish. *West Lumber Co. v. M., K. & T. Ry. Co. of Texas*, 746.

DISTANCE. *See also* CONSTRUCTIVE MILEAGE.

Contention that Coalmont, Colo., should be placed on the Rock Springs, Wyo., basis, not sustained. Distances from Rock Springs are uniformly 125 miles greater than those from Coalmont, and Rock Springs rates apply from Kemmerer and Evanston, Wyo., 85 and 115 miles west of Rock Springs. *Northern Colorado Coal Co. v. C., W. & E. Ry. Co.* 73 (77). Between Chicago and New York, assumed to be 920 miles. *Official Classification Rates on Paper*, 120 (132).

Complainants contend and defendants admit that the Walsenburg, Colo., basis of rates on coal is being spread around regardless of distance and regardless of operating conditions. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (179, 180).

In cases involving a transcontinental rate situation with an abnormally depressed through rate, a departure from the generally recognized rule of diminution of differentials with distance may be justified. *Cast-Iron Pipe from North Carolina Points*, 183 (186).

Distance alone considered, the rates to New Orleans might well be higher than to Galveston or Port Arthur. *Cottonseed Products to Port Arthur, Tex.* 878 (885).

DISTANCE—Continued.

Distance, while important, is not necessarily controlling, especially when there is under consideration a comprehensive fabric and relationship of rates to points in various sections of the country. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (520).

Contention that Sioux Falls takes higher rates from Chicago than Sioux City takes because it is farther away, and that Sioux Falls accordingly is entitled to lower rates from Duluth because of its shorter distance, not sustained. *Traffic Bureau, Sioux Falls Commercial Club, v. G. N. Ry. Co.* 531 (534).

DISTURBANCE OF ADJUSTMENT.

Commission should not lightly, nor upon grounds which do not seem convincing, find that rate differences which may be capable of explanation or defense upon a complete record are tantamount to undue discrimination, especially where such finding would result in what may be an unnecessary disruption of a rate fabric established for intrastate traffic. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (463).

DIVERSION.

Proposed changes in rules relating to routing and diversion of grain and grain products from points in Idaho and Utah to Los Angeles on tracks of the Santa Fe road, found justified. The Salt Lake route could not be required without its consent to surrender traffic destined to Los Angeles to the Santa Fe at San Bernardino. Grain to California Points, 367 (369).

Reconignment and diversion distinguished. *Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. Co.* 551 (552).

The service of reconignment or diversion is beneficial and is not only proper but may be required of the carriers. *Id.* (555).

A maximum charge of \$1 per car, in addition to the through rate, for the diversion of cars as to which diversion orders are received before their arrival at hold points held proper. Charge of \$2 per car for such service not justified. *Id.* (558).

The fact that a shipper was able to divert to ultimate destination a large number of cars in transit, and the further fact that shippers are now ordering direct, afford ground for the belief that formerly the privilege was used unnecessarily. *Id.* (559).

Lumber billed from Weirgor to Milwaukee, Wis., was rebilled thence to Chicago. Diversion order received after arrival at Milwaukee and could not be executed; and combination of local rates was lawfully assessed; *Bradley Timber & Railway Supply Co. v. M., St. P. & S. S. M. Ry. Co.* 568.

Less-than-carload shipments generally are not subject to diversion en route. *Strobel Co. v. I. C. R. R. Co.* 707 (708).

Notice to divert contained erroneous car number noted on bill of lading by consignor and diversion was not made. Defendants not required to refund additional charges resulting from shipper's error. *Woodland Lumber Co. v. N. S. R. R. Co.* 700.

DIVISIONS.

Disagreement between line-haul carriers and switching carriers as to proportion of reweighing charges each should bear is tantamount to a dispute regarding divisions. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (86).

Disagreements among carriers relative to divisions of joint rates are insufficient to justify the cancellation of such rates. *Passenger Fares from Milwaukee, Wis.* 98 (100).

DIVISIONS—Continued.

Order requiring filing of division sheets or statements covers all shipments of company fuel irrespective of purpose for which fuel is used, and fact that division accruing on a shipment of company fuel is same as division accruing on a commercial shipment can not be construed as relieving carrier from compliance with order. Division sheets filed with Commission must be considered public records. Filing Divisions on Railway Fuel Coal, 169 (170).

Mere fact of disagreement between carriers as to divisions does not prove that joint rates are unreasonable, or that routes over which they are applied should be abandoned. Carriers should make further endeavor to agree. Lake and Rail Rate Cancellations, 201 (202).

Are ordinarily of no concern to shippers when through charges themselves are reasonable, and divisions of the Alexandria, Va., rates are not a criterion for guidance in determining what rates should apply to Culpeper and Manassas, Va. Bennett & Sons v. C. & O. Ry. Co. 310 (314).

Question of divisions should not be permitted to deprive complainant of reasonable and nondiscriminatory rates. West Lumber Co. v. St. L. & S. F. R. R. Co. 401 (404).

New basis of divisions adopted by petitioners and steamship company appears more equitable than the basis formerly in effect. Applications for authority to continue ownership and operation of steamship company granted. Peninsular & Occidental S. S. Co. 662 (664).

DOCK CHARGE. See also HANDLING AND DOCKAGE CHARGES.

It appears that in no instance has any connection of the boat line been called upon to pay the dock charge made by the Grand Trunk Ry. for use of its docks. Passenger Fares from Milwaukee, Wis., 98 (100).

DRAYAGE.

Oak lumber from Jackson, Tenn., to Preston, Ont., found to have been misrouted, and reparation awarded for drayage charges that would not have accrued if shipment had moved over route specified in bill of lading. Bedna Young Lumber Co. v. I. C. R. R. Co. 357.

Rate on cotton piece goods from St. Louis, Mo., to Jefferson City, Mo., not found unreasonable. One component of the combination asked is a drayage charge not on file with the Commission. Star Clothing Mfg. Co. v. M., K. & T. Ry. Co. 537 (538).

DUNNAGE.

Shipments overcharged if carriers fail to make deductions for dunnage in accordance with tariffs. Stone Producers Sales Co. v. C., I. & L. Ry. Co. 485 (486).

Cancellation of weight allowances for dunnage and of money allowances for inside car doors used in shipping cans found justified. Continental Can Co. v. B. & O. R. R. Co. 618.

DUTY OF CARRIER. See also TARIFFS.

A common carrier engaged in interstate commerce is bound under the express provisions of the act to accede to every proper application for service, subject only to such reasonable regulations as it may prescribe. It must accept less desirable traffic as well as that which is more desirable. Knapp Supply Co. v. O. E. Ry. Co. 627 (628).

EARNINGS.

Car-mile earnings have long been considered of greater force than comparisons of ton-mile revenue. Dressed Beef from New York, N. Y., 51 (58).

ELECTRIC LINES.

The Steubenville Company transports nothing but passengers, although its charter seems to give it authority to handle freight. It is subject to the provisions of the act. *City of Steubenville, Ohio, v. Tri-State R. & E. Co.* 281 (283).

The Steubenville Company has suffered from its relations with affiliated companies and is in a position to make better arrangements with respect to amounts paid by it for power, bridge toll, and track rental. *Id.* (286, 287).

ELEVATORS.

Allowances to elevator companies for direct and indirect loading of export grain at Philadelphia, in addition to charges paid by shipper, are required to make up large annual deficits of elevator companies. *Commercial Exchange of Philadelphia v. P. R. R. Co.* 675 (679).

EMBARGOES.

On export wheat at Galveston and New Orleans. The Santa Fe maintained longer embargoes than were maintained by any other carrier reaching the Gulf either at Galveston or New Orleans. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 33 (34).

EMPTY MOVEMENT.

A car to be reweighed is not properly chargeable with any empty movement. It is already at the industry or team track and its empty movement therefrom after the reweighing operation is included in the road-haul rate. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (82).

EQUALIZING RATES.

Neither the voluntary joinder by the Santa Fe in certain rates to New Orleans substantially equal to its own to Galveston, to enable it to participate in business originating on a foreign line, nor its adoption of existing tariffs of the Oklahoma Central when the latter became part of its system, no discriminations being shown to result, would make necessary an extension of rate equality to all Santa Fe points of origin. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 33 (36).

Carriers may have a limited right to encourage and protect by rate equalization communities which are under natural disadvantages. *Cast-Iron Pipe from North Carolina Points*, 183 (186).

EQUIPMENT.

Provision should be made for the utilization of equipment other than standard under properly related charges. *Minimum Charges on Bulky Articles*, 257 (261).

When extraordinary equipment is used for the transportation of long freight, that is, large cars which were primarily constructed to accommodate certain classes of freight, such as vehicles, furniture, and automobiles, the same rate-making principle should also apply. *Id.* (262).

ERROR.

Shipper need not look beyond tariffs of carrier that is offering him a service in order to ascertain whether specific statements therein with respect to charges of connections are correct. *Chelsea Refining Co. v. M. P. Ry. Co.* 28 (29).

Item which provided for loading and unloading at Portland, Oreg., without additional charge was erroneously omitted from the tariff. Reparation awarded for amount of loading charges paid. *Crown-Columbia Paper Co. v. O.-W. R. R. & N. Co.* 231 (232).

ERROR--Continued.

Rate canceled by mistake subsequently reestablished. Waiver of undercharges which accrued during period higher rate was in effect, authorized. *Alcus & Co. v. I. C. R. R. Co.* 493 (494).

Joint rate on lumber from Elizabeth City, N. C., to Spring Grove, Pa., higher than the authorized basis for constructing through rates from Carolina points, and published through error, found unreasonable.

Reparation awarded. *Dare Lumber Co. v. N. S. R. R. Co.* 507.

Charges on pickles and machinery and other articles inadvertently forwarded as separate less-than-carload shipments under two bills of lading, not found illegal. *Sheldon & Co. v. Wabash R. R. Co.* 569.

It is a common practice for consignors to prepare bills of lading, and defendants will not be required to refund additional charges resulting from shipper's error. *Woodland Lumber Co. v. N. S. R. R. Co.* 709 (710).

ESTIMATED WEIGHT.

Charges on cantaloupes from Swink, Colo., to Chicago, Ill., based on estimated weights, not found unreasonable or discriminatory. The only evidence offered was vague and indefinite and altogether insufficient to prove that the estimated weights applied were unreasonable. Actual weight not shown. *Fish & Co. v. A., T. & S. F. Ry. Co.* 115 (116).

A reasonable mixing rule would provide that an estimated weight of 700 pounds per 1,000 feet for cedar siding be used when the amount thereof in feet is stated on bill of lading and actual weight of such siding is not obtainable. *Pioneer Lumber Co. v. N. P. Ry. Co.* 390 (400).

EXPORT RATES.

The exporter at Port Arthur has the right to engage in business, and to have his traffic delivered to him at reasonable and nondiscriminatory rates. Carriers may not impose upon him rates for transportation which include service for which no charges are imposed. *Cottonseed Products to Port Arthur, Tex.* 378 (387-388).

EUROPEAN WAR. See WAR IN EUROPE.**EVIDENCE. See also ADMISSION.**

Exhibit comparing differentials, although of little or no practical help, held properly admissible in evidence. *Cast-Iron Pipe from North Carolina Points*, 183 (186).

Showing made by respondents, who presented no witness and no testimony on deposition, can not be regarded as satisfactorily discharging the burden cast upon them to justify proposed rates. *Hides to Boston, Mass.* 194, 195.

Notwithstanding admissions of carriers that rates were unreasonable for purposes of informal proceedings, complainant is under the burden of proving such rates unreasonable; and evidence offered by counsel who had no personal knowledge of facts held incompetent. *Joseph Bros. & Co. v. M. C. R. R. Co.* 719 (720).

EXPORT RATES.

Rates on lumber from Charleston, Miss., to Mobile, Ala., and Pensacola, Fla., for export, not found unreasonable. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 278.

Rates on distillers' dried grain from Midway, Ky., to eastern ports, for export, readjusted subsequent to hearing on basis satisfactory to complainant, and complaint dismissed for want of proof of damage. *Greenbaum Co. v. S. Ry. Co.* 715.

FABRICATION.

Competition between coast fabricators at Spokane, Wash., with eastern fabricators, discussed. Iron and Steel from Pacific Coast Points, 545 (546).

FACTOR.

Combination through rate not unlawful for the reason that a factor of the lower combination was an intrastate rate not on file. McCaul-Dinsmore Co. v. N. P. Ry. Co. 305 (306).

The Omaha-Steinauer component of the through rate on soft coal from Hudson, Wyo., to Steinauer, Nebr., found unreasonable to extent that it exceeded rate subsequently established. Sunderland Bros. Co. v. C. & N. W. Ry. Co. 581.

Jacksonville-Lemon City component of the rate on seed potatoes from Seeley Creek, N. Y., to Lemon City, Fla., found unreasonable. Reparation awarded. Wilcox v. E. R. R. Co. 583.

Question whether interior Iowa points are subject to undue prejudice must be determined by a consideration of the aggregate charges from points of origin to destination and not by a test of factors by which but a part of those charges are made. Fresh Meat and Packing-House Product Rates, 665 (668).

FINANCIAL CONDITIONS.

It is the opinion of Colorado Midland officials, aided by expert advice, that proposed reduction in rates from South Canon and Cameo, Colo., will materially increase the output of complainants' mines and that the financial condition of the railroad will be correspondingly improved. South Canon Coal Co. v. C. M. Ry. Co. 174 (178).

FLAT RATES.

Local or flat rates of the Rock Island on hardwood logs and gross rates of the Iron Mountain on hardwood bolts and logs from points in Arkansas, Louisiana, and Oklahoma to Memphis found unreasonable and reasonable rates prescribed. Reparation awarded. Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co. 432 (438).

FOLLOW LOT.

Two cars furnished for shipment of dried fruit were unequally loaded by shipper's teamster. Neither bill of lading nor waybill for car containing the part lot referred to billing covering first car which is not shown to have been fully loaded. Charges on second car at minimum weight instead of actual weight not found unreasonable. Teasdale & Co. v. V. & S. Ry. Co. 565 (567).

FORMAL COMPLAINT. See LIMITATION OF ACTION.**FOURTH SECTION ORDER.**

Increased rates from eastern territories to Spokane, Wash., would be violation of Fourth Section Order No. 124, and therefore are not justified. Rates on Iron and Steel Articles to Spokane, 669.

FREE TIME. See also BUNCHING; DEMURRAGE; RECONSIGNMENT; STORAGE RULES.

Tariffs found unreasonable in that they fail to contain a rule providing for additional free storage time at Philadelphia on account of bunching of cars by carriers. Commercial Exchange of Philadelphia v. P. R. R. Co. 320 (325).

FREIGHT BILLS.

Freight bills presented to ultimate consignees of shipments reconsigned in transit must not show the name of the original consignor, except with consent of original consignee, and must not show point of origin or rout-

FREIGHT BILLS—Continued.

ing except when the ultimate consignee is called upon to pay the through charges, or a portion of the through charges based upon the remainder of a joint through rate. In the Matter of Freight Bills, 91 (93).

GEOGRAPHICAL LOCATION. See LOCATION.**GOVERNMENT AID.**

Large sums have been expended by the national government at Astoria, Oreg., and the municipal government and private interests have likewise invested substantially in developing its harbor facilities. City of Astoria *v. S., P. & S. Ry. Co.* 16 (25).

GRADES AND CURVES.

From points in the so-called inland empire to Astoria, Oreg., the haul is over a practically water level railroad, while from same points to Seattle the haul is in large part over a route of sharp curves and steep grades across the Cascade Mountains at high elevations. City of Astoria *v. S., P. & S. Ry. Co.* 16 (21).

GROSS RATES.

Gross rates of the Iron Mountain on hardwood bolts and logs from points in Arkansas, Louisiana, and Oklahoma to Memphis found unreasonable and reasonable rates prescribed. Reparation awarded. Vandeenboom-Stimson Lumber Co. *v. St. L., I. M. & S. Ry. Co.* 432 (438).

GROUP RATES.

There is such a relationship between Seattle, Tacoma, Astoria, and Portland as to require them to be considered as forming more or less of a natural rate group with respect to much of the traffic involved. City of Astoria *v. S., P. & S. Ry. Co.* 16 (27).

Rates on packing-house products and fresh meats from Mason City, Iowa, which is on the St. Paul basis, to Arkansas and Texas points not found unreasonable. The location of Mason City reasonably precludes an extension of either Milwaukee or Chicago territory to include it. Decker & Sons *v. M. & St. L. R. R. Co.* 228 (280).

Present grouping and rates on lumber from Bonners Ferry, Idaho, and western Montana producing points to North Dakota and Minnesota are unreasonable and unjustly discriminatory and proper relationship prescribed. Bonners Ferry Lumber Co. *v. G. N. Ry. Co.* 263 (275).

Have many times been approved, where they do not result in undue preference; but the extension of the group to include a point of delivery on one connecting line, coupled with the refusal to include points on other lines similarly situated is not justified. National Dock & Storage Warehouse Co. *v. B. & M. R. R.* 643 (649, 650).

HANDLING AND DOCKAGE CHARGES.

Responsibility for transfer of flour from steamers' gangplanks into defendants' cars or into warehouses pending reshipment rested upon shippers, there being no tariff authority for the service, and reparation on account of certain handling and dockage charges at Buffalo, N. Y., denied. Flour City S. S. Co. *v. L. V. R. R. Co.* 729 (731).

HARBOR.

Improvements at Astoria, Oreg., discussed. The harbor embraces an area of 12 square miles available for anchorage, and has a depth of water that puts it on an equality with the great harbors of the country. City of Astoria *v. S., P. & S. Ry. Co.* 16 (22, 23).

HEARING.

Rates readjusted subsequent to hearing on a basis satisfactory to complainant. Complaint dismissed, Greenbaum Co. *v. S. Ry. Co.* 715.

HEARING—Continued.

Complaint dismissed because defendants agreed to publish rates desired by complainant and accordingly filed tariffs. *West Lumber Co. v. M. K. & T. Ry. Co. of Texas*, 746.

HEATER-CAR SERVICE.

Complainants' tonnage not sufficient to warrant. *Longo Fruit Co. v. I. T. System*, 487 (489).

ICING. See REFRIGERATION.**ILLINOIS CLASSIFICATION.**

Conditions under which certain direct routes operate in territory north of the river is peculiar in that rates between river crossings are governed by official classification, whereas rates at certain intermediate points are governed by Illinois classification. *Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (415).

Rates not in excess of fourth class, subject to Illinois classification, on iron and steel locks with or without brass or bronze trimmings in straight or mixed carloads, prescribed. *United States Steel Lock Co. v. C., M. & St. P. Ry. Co.* 542.

IN AND OUT RATES.

The fact that one market has higher rates inbound than its competitor is not a justification for rates outbound which are less than just and reasonable. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (458). Application of inbound rates on cottonseed cake and meal stopped at Meridian, Miss., and reshipped at outbound rates from there is not unreasonable. *Meridian Grain & Elevator Co. v. A. & V. Ry. Co.* 478 (481).

INDUSTRIAL SWITCHING.

No obligation shown to rest upon the Big Four to switch cars beyond junction points of tracks of the respective stone companies and spurs maintained by the Big Four. Services beyond such points appear to be accessory to the industries. *Westport Stone Co. and Big Four Stone Co. Case*, 316 (319).

INFORMATION. See DISCLOSING INFORMATION.**INJUNCTION.**

Should suspended tariffs become immediately effective collection of rates thereunder will be in violation of the injunction issued by the supreme court of Massachusetts. Commission not warranted in permitting the effective date of the tariffs to be deferred until further proceedings may be had before that court. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (656).

INLAND EMPIRE.

That section of the country extending from the Cascade Mountains on the west to the Rocky Mountains on the east and including the eastern portions of the states of Oregon and Washington, western Montana, and practically the entire state of Idaho, is generally known as the inland empire. *City of Astoria v. S., P. & S. Ry. Co.* 16 (17).

INTERCORPORATE RELATIONSHIP.

Evil that may arise from ownership of stock in coal companies and other commercial enterprises by railroad officials, referred to. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (47).

INTERMEDIATE POINTS.

Stations next adjacent to Aubrey, Ark., were not indexed and the intermediate clause therefore did not provide Helena rates on shipments to Aubrey. *Darragh Co. v. C., R. I. & P. Ry. Co.* 549 (550).

INTERMEDIATE RATES. *See also* **STATE RATES.**

Rates that apply on through traffic to destinations in Louisiana and Texas where specific through rates are not published would be applicable were the present through rates canceled. Their function, therefore, is essentially that of intermediate rates and they clearly fall within the meaning of that term as used in the fourth section. Through Rates to Points in Louisiana and Texas, 153 (164).

INVESTMENT.

The purchase of an additional terminal at Norfolk, Va., for the exclusive use of shippers of fruits and vegetables has not enhanced the value of the service accorded to the shipper, but has added materially to the shippers' inconvenience; and does not justify increased rates proposed. Fruits and Vegetables from Norfolk, Va., 252 (256).

ISSUE.

Contention of interveners that rates on sash and doors from their Pacific coast plants to eastern trunk line territory are unreasonable is not an issue that can properly be decided in this proceeding. *Anson, Gilkey & Hurd Co. v. S. P. Co.* 105 (106).

Although not put in issue by complaint, special conditions existing at Baltimore indicate that defendants ought to make allowance in their rules to cover delays due to bunching by carriers of cars in transit. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 328 (327).

Complaint amended to withdraw objection to local distance rate from Tuscor, Mont., to Clark's Fork, Idaho, on lumber for beyond, leaving it challenged only as a proportional rate. Its measure not being in issue, complaint dismissed. *MacGillis & Gibbs Co. v. N. P. Ry. Co.* 633 (634).

Rates now proposed were not in issue at hearing; but since they are lower than rates in suspended schedules, the Commission unquestionably has power to find that they have been justified if record so warrants. *Fresh Meat and Packing-House Product Rates*, 665 (666).

JOINT RATES. *See also* **THROUGH AND LOCAL.**

Proposed cancellation by boat line of joint passenger fares with electric line not justified. Disagreements among carriers relative to divisions of joint rates are insufficient to justify the cancellation of such rates. *Passenger Fares from Milwaukee, Wis.* 98 (100).

Commission can not find that joint rates should be established from South Canon and Cameo, Colo., to points on the St. Joseph & Grand Island Railway, no evidence having been addressed to that issue. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (182).

Joint rates charged on coal from Arkansas points to Onalaska, Tex., and combination rates subsequently made applicable by canceling the joint rates, found unreasonable and reasonable rates prescribed. Reparation awarded. *West Lumber Co. v. St. L. & S. F. R. R. Co.* 401 (404).

Cancellation of joint rates from eastern seaboard territory and interior eastern points through the port of Charleston to Charlotte and other destinations involved, justified. *Ocean-and-Rail Rates to Charlotte*, N. C. 405 (410).

Joint rates on potatoes and cabbage from Cape Charles R. R. stations to Philadelphia and New York which should not exceed rates from Cape Charles, Va., by more than 4 cents per standard barrel, prescribed. Reparation awarded. *Scott v. O. O. R. R. Co.* 467 (473).

JOINT RATES—Continued.

Establishment of joint through rates on coal from Mohrland and Hiawatha, Utah, to points on the Santa Fe branch line running south from Los Angeles to National City, Cal., ordered, and maximum to be observed prescribed. *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.* 474 (477).

Through rates on paper from Wisconsin mills to Nashville should be withdrawn, leaving traffic to move on the Ohio River combination. Rates from both Wisconsin and Michigan mill points will then be made on same basis. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (527).

Cancellation of joint through rates on lumber from producing points on the C. & N. W. Ry. to certain points on the C., M. & St. P. Ry. west of the Mississippi River, not justified. Lumber to C., M. & St. P. Ry. Stations, 587.

Joint rate is not shown to have been unreasonable over route of movement by existence of a low combination rate over another route. Joint rate was the same over both routes. *Hammer v. A. C. L. R. R. Co.* 621 (622).

So far as the shipping public is concerned the cancellation of an absorption is the withdrawal of a joint rate, leaving effective the higher aggregate of intermediate rates. Carrier must justify the increase. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (650).

Joint rate on logs from Toleens Spur, Mich., to Seymour, Wis., not found unreasonable as compared with a combination rate, applicable where no specific commodity rates are in effect. *Gablowsky v. G. B. & W. R. R. Co.* 699 (700).

JUDICIAL NOTICE. See TRANSPORTATION CONDITIONS.**JURISDICTION.**

It was held to be the function of this Commission, and not of the court, to decide administrative questions as to the legality of allowances and reasonableness of amounts paid for service performed by shipper. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40, 43.

As the act applies to "all services in connection with the receipt, delivery, * * * and handling of property transported," the Commission has jurisdiction of the weighing service. *Detroit Coal Exchange v. M. C. R. R. Co.* 80 (81).

Electric railway transports nothing but passengers, although its charter seems to give it authority to handle freight. It is subject to the provisions of the act. *City of Steubenville, Ohio, v. Tri-State R. & E. Co.* 281 (283).

Traffic from Canada to the United States is as much within our jurisdiction to extent of its movement within the United States as traffic from over seas or from one state to another. Motion to dismiss complaint for want of jurisdiction denied. *Emery & Co. v. B. & M. R. R.* 636 (637).

Should New England carriers decline to cooperate with the state of Massachusetts in its effort to develop business of the port of Boston their action is not subject to review by the Commission under any provision of the act. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (656).

LAKE-AND-RAIL RATES.

Cancellation of joint rates in connection with water line not justified. *Lake and Rail Rate Cancellations*, 201.

LEGAL RATES.

Rate charged on shelled corn from Sioux Center, Iowa, to St. Joseph, Mo., not found to have been in excess of rate legally applicable. *McCaull-Dinsmore Co. v. G. N. Ry. Co.* 297 (298).

Combination rate on lumber from Weirgor, Wis., to Chicago, Ill., billed originally to Milwaukee, and rebilled thence to Chicago, was lawfully assessed. Tariff permitted rebilling only at combination of local rates to and from Milwaukee. *Bradley Timber & Railway Supply Co. v. M., St. P. & S. S. M. Ry. Co.* 598.

Rates legally applicable on corn from Iowa points to Council Bluffs, Iowa, reconsigned to Lincoln, Nebr., and Kansas City, Mo., not found unreasonable. Lower intrastate rates were not applicable on interstate traffic when other rates were available. *Updike Grain Co. v. C., St. P., M. & O. Ry. Co.* 616, 617.

Class rates on lightning-rod fixtures from Trenton, N. J., to Des Moines, Iowa, not found unreasonable or at variance with the legal tariff. *Dodd & Struthers v. P. R. R. Co.* 629.

LIMITATION OF ACTION.

Formal complaint filed more than two years after claims accrued and more than six months after notice to complainant that formal complaint would be necessary and claim must be held to have been abandoned. *Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 355; *Meeds Lumber Co. v. F. & G. R. R. Co.* 490; *Bradley Timber & Railway Supply Co. v. M. & I. Ry. Co.* 497; *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 498; *Staten & King Hardware Co. v. P. Co.* 736.

Informal correspondence prior to filing of complaint which furnishes no data from which particular shipments may be identified does not stop the running of the statute. *Mutual Oil Co. v. A., T. & S. F. Ry. Co.* 591 (592).

LINE HAUL. See also LONG HAUL.

Union Pacific tariff which authorized transit at stations on its lines did not authorize transit at industries not reached by Union Pacific tracks. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 682 (684).

LINE-HAUL RATES. See ADDITIONAL CHARGES.**LOADING.**

It may be presumed since the commodities are perishable that the loading is little, if any, in excess of the minimum. *Dressed Beef from New York, N. Y.*, 51 (53).

Initial lines admit that the physical characteristics of the Louisiana and Texas potato prevented heavier safe loading than 24,000 pounds per standard car. *Minimum Weight on Potatoes*, 101 (102).

Unequal loading of two cars was act of shipper's teamster and complaint asking reparation because initial carrier did not furnish both cars at same time or bill second car as a part lot, dismissed. *Teasdale & Co. v. V. & S. Ry. Co.* 565 (566, 567).

LOADING CHARGE.

Additional charges for loading paper into cars at Portland, Oreg., found unreasonable. Item which provided for loading and unloading without additional charge said to have been erroneously omitted from the tariff. *Crown-Columbia Paper Co. v. O.-W. R. R. & N. Co.* 231 (232).

LOADING CHARGE—Continued.

Inequality in charges for direct loading of export grain from elevators into ocean-going vessels at Philadelphia in comparison with charges imposed at New York not found unjustly discriminatory. *Commercial Exchange of Philadelphia v. P. R. R. Co.* 675 (678).

No reason appears for disturbing the present equality of charges for direct and indirect loading. *Id.* (679).

LOCAL RATES.

Local or flat rates of the Rock Island on hardwood logs from points in Arkansas, Louisiana, and Oklahoma to Memphis found unreasonable. Reasonable rates prescribed and reparation awarded. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (438).

Local distance rates from Tuscor, Mont., to Clarks Fork, Idaho, on lumber for beyond found lawfully applicable. *MacGillis & Gibbs Co. v. N. P. Ry. Co.* 633.

LOCATION.

Each city or shipping point is entitled to advantages in rates which spring from its location, with the limitation that the rates must be reasonable and not unduly discriminatory. *New Orleans-Texas Rates*, 1 (9).

The geographical location of Oklahoma compels movement of most of its wheat to ports on the Gulf of Mexico, for export. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 33 (34).

That lower rates from certain paper mills is warranted by reason of their geographical location is an explanation which is too general in character to be convincing. *Official Classification Rates on Paper*, 120 (136).

The location of Mason City reasonably precludes an extension of either Milwaukee or Chicago territory to include it, with respect to traffic to Texas points. *Decker & Sons v. M. & St. L. R. R. Co.* 228 (230).

It is well settled that carriers may not be required to remove, by rate adjustments, the natural disadvantages of location under which one community rests in competition with another community that is more favorably located. *Cottonseed Products to Port Arthur, Tex.*, 378 (386).

Oklahoma City is exceedingly favorably located from a transportation standpoint. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.* 392 (394).

LOG LOADERS.

Operation of, interferes with train service and causes considerable damage to carriers' cars and roadbed, but is said to be necessary because the marshy character of the country and lack of roads preclude the hauling of logs to stations. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (434).

LONG AND SHORT HAUL.

Rate on bar iron from Evansville when from beyond to Nashville which is lower than rates to intermediate points south of De Koven, Ky., justified, provided that rates to points south of De Koven to and including Hopkinsville shall not exceed rates prescribed as maxima. *National Rolling Mill Co. v. C. & E. I. R. R. Co.* 108 (110-111).

Rate on cabbage from Placentia, Cal., to Spokane, Wash., found unreasonable to extent it exceeded the rate to Butte, Mont., to which point Spokane is intermediate. *Merchants Produce Co. v. O.-W. R. R. & N. Co.* 209 (210).

Establishment of a 65-cent rate from Pittsburgh to Pacific coast ports authorized. Rates to intermediate points will be controlled by requirements of Fourth Section Order No. 124. *Rates on Iron and Steel Articles*, 237 (241).

LONG AND SHORT HAUL—Continued.

Authority to continue rates on shelled corn from St. Paul, Minn., to St. Joseph, Mo., lower than rates from Sioux Center, Iowa, and other intermediate points, denied. *McCaull-Dinsmore Co. v. G. N. Ry. Co.* 297 (298). The inhibition of the long-and-short-haul clause is not restricted to movements over the line or lines of one carrier only, but embraces hauls over the lines of any number of carriers. *Bennett & Son v. C. & O. Ry. Co.* 310 (314).

Rates on bituminous coal to Culpeper and Manassas, Va., may exceed rates on like traffic to Alexandria and Washington. Maximum prescribed. *Id.* (315).

Carriers operating between river crossings north of the Ohio River, except those operating between St. Louis or East St. Louis and the river crossings via Chicago and Chicago junctions as to which relief is denied, should be allowed to meet water competition by continuing lower rates between these points than are maintained at intermediate points. Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 411 (423-426).

Carriers permitted to continue competitive rates between river points via routes south of the Ohio River and to maintain higher rates at intermediate points, except that circuitous lines south of the river will also refrain from continuing departures from the fourth section in cases where there is an unreasonably great disparity between distances via their routes and distances via the short lines. *Id.* (428).

Carriers permitted to charge rates to water competitive points lower than to intermediate points, provided rates to intermediate points do not exceed the lowest combination and present rates are not exceeded. *Id.* (431).

Contention that fourth section was violated not sustained because the lower rate from the more distant point was predicated on shipments of 20 carloads or more at a time, and there was no violation with respect to any number of cars less than the specified number. *Wells Lumber Co. v. C., M. & St. P. Ry. Co.* 464 (466).

Rates on oats from Milburn, Okla., and on corn chops from Council Bluffs, Iowa, to Aubrey, Ark., milled in transit at Little Rock, Ark., found unreasonable to extent that they exceeded rates to Helena, Ark., and reparation is awarded. *Darragh Co. v. C., R. I. & P. Ry. Co.* 549.

Authority to continue lower commodity rates to Fredericksburg, Richmond, and Petersburg, Va., than to Washington, D. C., on traffic from New York and other eastern points, denied. Chamber of Commerce of Washington, D. C., *v. P. R. R. Co.* 593.

Fourth section relief with respect to the carload rates on fertilizer from Mount Pleasant, Tenn., to various destinations in Kentucky, Alabama, and Mississippi, denied. Reparation awarded on account of unreasonable rates. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 602.

Boaz, Ala., is not intermediate to Attalla, Ala., from Mount Pleasant, Tenn., via the L. & N. over which line a lower rate applies to Attalla than to Boaz. Fourth section not violated. *Id.* (609).

Authority to establish rates on bituminous and cannel coal from points on the Pennsylvania R. R. and its connections to water competitive points on the Maryland-Delaware peninsula lower than rates to intermediate points denied. Bituminous Coal from Points on the Pennsylvania R. R., 658.

Proposed increased rates from eastern defined territories to Spokane, Wash., found to be in violation of Fourth Section Order No. 124, and therefore not justified. Rates on Iron and Steel Articles to Spokane, 669.

LONG AND SHORT HAUL—Continued.

Class and commodity rates from New York, Cincinnati, and Memphis established or that will be established under requirements of fourth section orders removes the unjust discrimination against Eastman, Ga. Shippers of Eastman, Ga., *v. S. Ry. Co.* 672 (674).

Rates on oats and corn from Omaha to Arizona points exceeded the joint rate to Los Angeles. No reparation can be awarded on account of departures from the long-and-short-haul rule for shipments moved after the application of the joint rate to Los Angeles because rate charged was not found unreasonable or unjustly discriminatory. *Uplike Elevator Co. v. C., R. I. & P. Ry. Co.* 687 (688).

Competitive system of making rates to points within the Cincinnati switching limits admittedly resulted in discriminations and violations of the fourth section which have been eliminated following a general readjustment. *Ulland Coal Co. v. L. & N. R. R. Co.* 704 (706).

LONG HAUL.

Under the statute the Salt Lake route can not be required without its consent to surrender traffic destined to Los Angeles to the Santa Fe at San Bernardino. Grain to California Points, 367 (369).

Carrier's contention that it is entitled to the longer hauls described by it is without merit since it does not originate the traffic. *West Lumber Co. v. St. L. & S. F. R. R. Co.* 401 (404).

LOSS AND DAMAGE.

Notation placed on bills of lading exempting carriers from damage caused by freezing not found unlawful. *Longo Fruit Co. v. I. T. System*, 487 (489).

LOW-GRADE COMMODITY.

Crushed stone is a low-grade commodity, which loads well, and carriers have failed to justify the extent of the increased rates to some points. Stone from Illinois Points, 389 (390).

LOW RATES.

Commission can not prescribe a rate that is less than reasonable, and can not require the continuance of the present relationship on the low rate now in effect. Cast-Iron Pipe from North Carolina Points, 183 (186).

A joint rate may not exceed the aggregate of intermediate rates, even though one of the intermediate rates is depressed by rail or water competition. *Standard Lumber Co. v. S. G. Ry. Co.* 301 (303).

It can not be maintained that because a carrier has once chosen to make a low rate to meet water competition, it is estopped from thereafter increasing that rate. Lumber between Points in Western Trunk Line Territory, 370 (376).

Opinion of certain traffic officials is that the rate to Port Arthur is unduly low, but no material evidence was submitted, and on the face of it the rate is not unduly low. Cottonseed Products to Port Arthur, Tex., 378 (388).

Carriers are under no obligation to establish less than reasonable rates for purpose of overcoming any disadvantage suffered by reason of greater distance from source of supply. *Vanderboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (437).

MANUFACTURED PRODUCTS.

As a general rule, rates on raw material are lower than on manufactured products. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (437).

MAP.

- Plat showing relative location of the various ports, rail lines, and interior cities of northern Oregon, Washington, Idaho, and western Montana. *City of Astoria v. S. P. & S. Ry. Co.* 16 (19).
- Rate relationship of coal mines in Colorado and Wyoming. *Northern Colorado Coal Co. v. C. W. & E. Ry. Co.* 73 (74).
- Showing the boundaries of defined territories which embrace practically all of that portion of the United States east of the Missouri and Mississippi rivers, west and south of western trunk line territory, including also the state of Kansas and portions of Arkansas and Nebraska. *Through Rates to Points in Louisiana and Texas*, 153 (154).
- Indicating location of different coal-producing districts in Colorado. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (175).
- Topography of the country between Bonners Ferry, Idaho, and the eastern slope of the Rocky Mountains and the relationship of rates from Bonners Ferry, and from Libby, Eureka, and Columbia Falls, Mont., to a typical Montana destination point. *Bonners Ferry Lumber Co. v. G. N. Ry. Co.* 268 (270).
- Situation of railways and many routes traversing the territory immediately north and south of the Ohio and east of the Mississippi rivers. *Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (413).
- Routes from St. Louis to Evansville, Henderson, Louisville, Lebanon, and Cincinnati. *Id.* (429).
- Peninsula lying between the Chesapeake Bay and the Atlantic Ocean. *Scott v. C. C. R. R. Co.* 467 (468).
- Location of various docks and their rail connections at Boston, Mass. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (644).

MARKET COMPETITION. See **COMPETITION (MARKET)**.

MARKETS.

- The fact that one market has higher rates inbound than its competitor is not a justification for rates outbound which are less than just and reasonable. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (458).
- A carrier has no right, by refusing through routes and joint rates, to dictate the markets from which shippers on its line must purchase, or the territory to which industries on its line must sell, or in any other way to restrict fair competition. *Lumber to C. M. & St. P. Ry. Stations*, 587 (589).

MAXIMUM RATES.

- Commission is empowered to fix maximum rates only, and where this is accomplished by means of classification provisions the action is no less a fixing of maxima, from which carriers may make concessions where unjust discrimination does not result. *Minimum Charges on Bulky Articles*, 257 (260).

MEASURE OF RATES. See also **RELATIVE ADJUSTMENT**; **STATE RATES**.

- The fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route will be held to be the lowest combination that would lawfully apply if the joint through rate were canceled. *Through Rates to Points in Louisiana and Texas*, 153 (164).
- Lower rates which are forced by water competition can not be accepted as a measure of reasonableness of rates from or to points where such competition does not exist. *Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (431).

MEASURE OF RATES—Continued.

Commission can not attach great weight to rate comparisons, in the absence of a showing that rates cited are compensatory to carriers, or that circumstances, including volume of traffic and other transportation conditions, as well as needs of revenue, are similar. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (655).

MILEAGE RATES.

Mileage scale to be applied on fertilizer from Norfolk, Va., to points in North Carolina prescribed. *Royster Guano Co. v. A. C. L. R. R. Co.* 190. Rates on bar steel from Pittsburgh are grouped as to points of destination, and the mileage is averaged to all points in the groups. In this respect Jackson, Mich., is not discriminated against, but is on the central freight association mileage scale to same extent as competitive points. *Jackson Chamber of Commerce v. P. & R. Ry. Co.* 233 (236).

Reasonable rates on hardwood logs and bolts from various points to Memphis prescribed. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (438).

MINIMUM CHARGE.

Exception is ordered to the uniform minimum charge rule applicable to long or bulky articles prescribed in the original report, 33 I. C. C., 378, when shipments contain articles over 22 feet long and not exceeding 12 inches in diameter or other dimension. *Minimum Charges on Bulky Articles*, 257. An exception to the uniform rule on behalf of shippers of plate glass and shippers of tanks used as watering troughs, not warranted. *Id.* (259, 260).

Any minimum charge rule is necessarily somewhat arbitrary. *Id.* (263).

MINIMUM WEIGHT.

Articles rated fourth-class: Increase in minimum generally applicable under Illinois classification does not appear to be warranted, and in the absence of evidence to the contrary 24,000 pounds must be deemed reasonable. *United States Steel Lock Co. v. C., M. & St. P. Ry. Co.* 542 (544).

Dressed beef: A minimum weight of 21,000 is not objected to. *Dressed Beef from New York, N. Y.*, 51 (54).

Flour: Charges based on a 35-cent rate, minimum 40,000 pounds, found unreasonable to extent they exceeded charges that would have accrued on basis of a combination rate, minimum 30,000 pounds. *Pillsbury Flour Mills Co. v. C., R. I. & P. Ry. Co.* 290 (291).

Flue lining and brick or hollow clay products do not compete generally and transportation conditions apparently do not demand the same minimum. Increase from 35,000 pounds to 50,000 pounds in the minimum for flue lining from central freight association territory not justified, but this finding is without prejudice to the establishment of a minimum of 40,000 pounds for the standard 36-foot car with provision for higher minima when larger cars are furnished. *Flue Lining Minimum Weight*, 328 (329).

Fresh meat and packing-house products: Increase in carload minimum on fresh meat from 20,000 to 21,000 pounds and on packing-house products loose from 28,000 to 30,000 pounds found justified. *Fresh Meat and Packing-House Product Rates*, 665 (668).

Fruits, tropical: Record affords no sufficient basis for a disturbance of present tariff provisions with respect to minimum weights for. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (60).

MINIMUM WEIGHT—Continued.

Grain and grain products: Proposed increase from 30,000 pounds to 40,000 pounds in the minimum carload weight on grain products and from 40,000 pounds to 50,000 pounds in minima on wheat and rye found justified. Rate increases in Western Classification Territory, 94 (95-96).

Grapefruit and oranges: Minimum of 28,000 pounds applied from Jacksonville, Fla., to Montana points, found unreasonable to extent that it exceeded 24,000 pounds. *Lindsay & Co. v. N. P. Ry. Co.* 187 (188).

Logs and bolts, hardwood: Carload minimum of 40,000 pounds, except when marked capacity of car used is less, or car of less capacity is ordered and a larger car furnished for carrier's convenience, held reasonable. *Vanderboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (439).

Melons: Proposed refrigeration charges based on a minimum weight of 20,000 pounds without additional charge for excess above the minimum, found justified. *Melon Refrigeration Charges*, 62 (64).

Potatoes: Proposed increase from 24,000 to 30,000 pounds in the minimum from East St. Louis, Ill., to points north of the Ohio River and east of the Indiana-Illinois state line, on potatoes originating in Louisiana and Texas, not justified. Initial lines admit that Louisiana and Texas potatoes can not be loaded in excess of 24,000 pounds without damage resulting. *Minimum Weights on Potatoes*, 101.

Wheels, wooden motor truck: Rates on, without hubs, not in excess of rates on wagon wheels in the white, ironed or not ironed, subject to a minimum weight not in excess of 30,000 pounds, prescribed. *Moreland Motor Truck Co. v. S. P., L. A. & S. L. R. R. Co.* 292 (293).

MISDESCRIPTION.

Two carloads of miscellaneous articles were billed as "contractor's outfit," a term which does not correctly describe the property transported which included mining machinery and railway track material. No proof submitted that rates legally applicable or the charges collected were unreasonable. *Millar v. E. K. Ry. Co.* 573 (575).

MISQUOTATION OF RATES.

Misquotation of rate applicable on coal from Coxton, Pa., to Lizton, Ind., reconsigned to Chicago, Ill., does not warrant condemnation of rate charged. *Holverscheld & Co. v. L. V. R. R. Co.* 495 (496).

Misrepresentation by a carrier of rates legally applicable will not justify an award of reparation. Both shippers and carriers are charged with notice of tariff provisions. *Chapin & Co. v. C., I. & L. Ry. Co.* 611 (612-613).

Neither the misquotation of a rate nor the voluntary reduction of a rate to meet that of a competing line or route is alone sufficient to base an award of reparation. *Puyallup & Sumner Fruit Growers' Asso. v. N. P. Ry. Co.* 701 (702).

MISROUTING.

Peaches from Craft and Henderson, Tex., reconsigned in transit to Holdrege, Nebr., found to have been misrouted north of Atchison, Kans., and Kansas City, Mo., respectively. No routing instructions were given, and shipments should have moved by way of Brownville, Nebr., from which point a commodity rate was applicable. *Collins v. C., B. & Q. R. R. Co.* 216.

MISROUTING—Continued.

- Lumber from Sanford and River Falls, Ala., to Knoxville, Tenn., and rates applicable via routes of movement not found unreasonable. Complainant was accorded the lowest rate consistent with its specific routing instructions. *Oden-Elliott Lumber Co. v. S. Ry. Co.* 304.
- Sewer pipe forwarded by initial carrier from Texarkana, Tex., to Brownsville, Tex., over an interstate route by which the rate was higher than by an intrastate route, found to have been misrouted and reparation awarded. *Texarkana Pipe Works v. B., S. L. & W. Ry. Co.* 341.
- Brick from Canton, Ohio, to Long Branch, N. J., found not to have been misrouted. Two routes were available under complainant's routing instructions, and same rate applied over both routes. No presumption of unreasonableness attaches to a joint rate applicable over a particular route because it exceeds the aggregate of intermediate rates over another route. *Metropolitan Paving Brick Co. v. W. & L. E. R. R. Co.* 345 (346).
- Oak lumber from Jackson, Tenn., to Preston, Ont., found to have been misrouted, and reparation awarded for drayage charges that would not have accrued if shipment had moved over route specified in bill of lading. *Bedna Young Lumber Co. v. I. C. R. R. Co.* 357.
- Floor and wall tile from Indianapolis, Ind., to Belle Plaine, Minn., found to have been overcharged and misrouted. Legal combination was not applied via route of movement nor was route of movement the cheapest route available. *Drake Marble & Tile Co. v. C., St. P., M. & O. Ry. Co.* 363 (364).
- Rosin from Snow Hill, N. C., to New York, N. Y., found to have been misrouted by an intermediate connecting line whose agent rebilled shipment at Kinston, N. C., and omitted routing specified. Undercharge waived and reparation awarded against this carrier who should settle with its connections on basis of rate legally applicable over route of movement. *Slocumb, Jr., v. C. R. R. Co.* 535, 536.
- Reparation awarded against intermediate connecting line on account of misrouting carload of cypress laths from Vacherie, La., to Youngstown, Ohio, and carloads of lumber from Plaquemine, La., to Washington C. H., Ohio, Agent of carrier changed billing of both shipments. *Vacherie Cypress Co. v. T. & P. Ry. Co.* 539.
- Reparation awarded on account of misrouting cotton from Fullerton, La., to Galveston, Tex. Initial carrier was instructed to forward the shipments over the cheapest route. *McCullough & Co. v. G. & S. R. R. Co.* 541.
- Pine lumber from Smith, La., to Cobourg, Ont., found not misrouted. Ultimate destination was not shown, and contention that the notation, "for reconsigning," on the bill of lading made it the duty of the initial carrier to forward shipment over route in connection with which reconsignment at a joint rate was possible, not sustained. *Bradley Lumber Co. v. N. O. G. N. R. R. Co.* 579.
- Initial carrier was obliged to forward shipment over cheapest route available under routing instructions, and as joint rate was same over both routes involved, this duty was fulfilled by routing through Richmond, although a lower combination existed via route other than route of movement. *Hammer v. A. C. L. R. R. Co.* 621 (622).
- Shelled corn from Ritter, Iowa, to Kansas City, Mo., not misrouted. No routing instructions were given by shipper; combination rate assessed was legally applicable, and no rate lower than rate charged applied by any route. *McCauld-Dinsmore Co. v. C., St. P., M. & O. Ry. Co.* 624.

MISROUTING—Continued.

Lumber from Louisville, Miss., to Sylacauga, Ala., dressed in transit at Newton, Miss., found to have been misrouted. A lower rate was available consistently with complainant's routing instructions. *Meeds Lumber Co. v. A. & V. Ry. Co.* 679 (680).

Routing instructions named delivering carrier but specified no intermediate carriers or gateways through which shipment should move. Shipment held not misrouted although there was in effect a combination rate by way of another route lower than the joint rate over that route and route of movement. *Keystone Lumber Co. v. B. & C. R. R. Co.* 702 (703).

Wire fence from Adrian, Mich., intended for delivery at San Angelo, Tex., delivered at Menard, Tex., was misrouted. The bill of lading was defective, its provisions impossible of execution, and it was the duty of initial carrier's agent to call upon consignor for further instructions before forwarding shipment. *Peerless Wire Fence Co. v. Wabash R. R. Co.* 721 (722).

Oats from Carpenter, Iowa, to Rib Lake, Wis., did not move through junction points specified in tariffs by way of which joint rate applied. No routing instructions were given and reparation awarded against initial carrier on account of misrouting. *Donahue-Stratton Co. v. C., M. & St. P. Ry. Co.* 739.

Watermelons from Holcomb, Mo., to Marshall, Minn., by way of Chaffee, Mo., and Thebes, Ill., moved at a higher combination than would have applied by way of St. Louis. Conference Ruling No. 214 (g), cited, and shipment held not misrouted. *Gamble-Robinson Co. v. C. & E. I. R. R. Co.* 740.

MIXED CARLOADS.

Charges on grapefruit in straight carloads and in carloads mixed with oranges from Jacksonville, Fla., to Montana points, found unreasonable. *Lindsay & Co. v. N. P. Ry. Co.* 187.

The transportation of a mixed carload of oats and speltz, separated by bulkhead, from Heaton, N. Dak., to Minneapolis, Minn., and reconsigned to Osceola, Wis., comprised two distinct local movements, and additional charge of \$5 assessed by each of defendants not found unreasonable or unlawful. *Osceola Mill & Elevator Co. v. M., St. P. & S. S. M. Ry. Co.* 335 (336).

Carriers required to provide for transportation of mixed carloads of soda ash and caustic soda to Oklahoma City, Okla., on basis of highest carload rate and minimum weight applicable to either commodity. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.* 392 (397).

A reasonable mixing rule would permit the application of the carload rate for each article in shipments of lumber with kiln-dried cedar siding, or with kiln-dried cedar siding and shingles, and would provide that an estimated weight of 700 pounds per 1,000 feet for cedar siding be used when amount thereof in feet is stated on bill of lading and actual weight of such siding is not obtainable. *Pioneer Lumber Co. v. N. P. Ry. Co.* 399 (400).

Reparation awarded on a mixed shipment of mineral water and ginger ale, bottled, and advertising matter, from Sheboygan, Wis., to Memphis, Tenn., on basis of aggregate of intermediate rates. *Sheboygan Mineral Water Co. v. C. & N. W. Ry. Co.* 491.

MIXED CARLOADS—Continued.

It is not shown that the mixed carload rate on storage batteries and other electrical appliances adversely affects complainant's interests. Third-class rating on storage batteries in straight carloads not found unreasonable. *Hudson Motor Car Co. v. P. R. R. Co.* 571 (572).

Two carloads of miscellaneous articles misdescribed as "contractor's outfit." Charges should be collected on basis of the combination less-than-carload rates applicable to each of the different articles unless a lower aggregate charge results from the use of the combination carload rate and minimum on such portions of the shipments as were covered by a carload rate, and the combination less-than-carload rates on the remaining articles. *Millar v. E. K. Ry. Co.* 573 (575).

Rate on scrap copper and scrap brass in carloads and on scrap brass and slab zinc dross in mixed carloads from Chicago to Milwaukee found unreasonable and reasonable rate prescribed. *Progressive Metal & Refining Co. v. C. & N. W. Ry. Co.* 631.

MONOPOLY.

Theory that it is good business policy for a railroad, by adjustment of rates, to give its industries a practical monopoly of traffic on its line can not be sanctioned. *Lumber to C., M. & St. P. Ry. Stations*, 587 (588).

MUNCIE & WESTERN R. R. CO.

Held to be a common carrier, with which connecting lines may participate in joint rates or to which they may make allowances for switching services. In *re Muncie & Western R. R. Co.* 510 (514).

NEW LINE.

Rate on grain from Rosholt, S. Dak., to Duluth, Minn., established and maintained while road was under construction as an accommodation to shippers, not found unreasonable. *Miller Elevator Co. v. F. & V. Ry. Co.* 224 (225).

NONAGENCY STATION.

Rate on molding sand from Nickel, Ind., a nonagency station, to Chicago, Ill., not found unreasonable. *Garden City Sand Co. v. N. Y., C. & St. L. R. R. Co.* 723.

OCEAN-AND-RAIL RATES.

Cancellation of ocean-and-rail rates from eastern seaboard territory and interior eastern points to Charlotte through the port of Charleston found justified. *Ocean-and-Rail Rates to Charlotte*, N. C. 405.

ONE-LINE POINT.

The fact that Seattle and Tacoma are reached by four transcontinental lines, while Astoria is reached by but one, is not sufficient, standing alone, to justify the present rate disadvantage of Astoria. *City of Astoria v. S., P. & S. Ry. Co.* 16 (26).

OPERATING CONDITIONS. See also GRADES AND CURVES.

Operating conditions to Astoria are more favorable than operating conditions to Seattle and Tacoma. *City of Astoria v. S., P. & S. Ry. Co.* 16 (26).

Of the Colorado Midland are extremely difficult. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (178).

"ORDER, NOTIFY."

Shipments bought on basis of delivery at destination and forwarded "order, notify." Consignee not entitled to reparation. *Advance Bedding Co. v. A., T. & S. F. Ry. Co.* 31 (32).

ORIGINATING CARRIER. *See* **LONG HAUL.**
OVERCHARGES.

Rate situation, due to an error in tariffs of the initial carrier, resulted in an overcharge, and shipper held entitled to refund. *Chelsea Refining Co. v. M. P. Ry. Co.* 28 (30).

Rate legally applicable on news print paper and on wrapping paper from Woodland, Md., to pier 50, New York, N. Y., included the lighterage charge from Harlem River station. Charges collected on basis of rate to Harlem River station plus the local rate thence to pier 50. Damages awarded. *Gilman & Co. v. M. C. R. R. Co.* 213.

Wrought-iron pipe from Wheeling, W. Va., to Wasco, Cal., and points on the Sunset Railway in California found to have been overcharged. Lower rates lawfully were applicable over defendants' lines from San Francisco than rates charged from Los Angeles and Stockton; and tariff provision clearly required the addition of the lowest rate to final destination from any California terminal to the rate applicable to California terminals. *Lucey Co. v. A., T. & S. F. Ry. Co.* 264 (265, 267).

Overcharges on wooden building materials from Oklahoma City to certain Texas points should be refunded promptly. *Curtis & Gartside Co. v. A., T. & S. F. Ry. Co.* 276 (277).

Involved. *Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co.* 338.

Floor and wall tile from Indianapolis, Ind., to Belle Plaine, Minn., found to have been overcharged and misrouted. Legal combination was not applied via route of movement nor was route of movement the cheapest route available. *Drake Marble & Tile Co. v. C., St. P., M. & O. Ry. Co.* 363 (364).

Shipments have been overcharged if deductions for dunnage have not been made in accordance with tariffs. *Stone Producers Sales Co. v. C., I. & L. Ry. Co.* 485 (486).

Defendants admit that a lower rate should have applied on lumber from Wendell, N. C., to Newark, N. J., than that charged. Rate charged found unreasonable and reparation awarded. *Smith Lumber Co. v. N. S. R. R. Co.* 508 (509).

Overcharges on corn from Ashton and Sheldon to Council Bluffs, Iowa, destined beyond, admitted and should be promptly refunded. *Uplike Grain Co. v. C., St. P., M. & O. Ry. Co.* 616 (617).

The legal joint rate on bran from Jackson, Mo., to Gulfport, Miss., with reconsignment at Memphis, should have been applied instead of rates charged, and defendants expected promptly to refund any overcharge. *Hunter-Robinson-Wenz Milling Co. v. St. L., I. M. & S. Ry. Co.* 695 (696).

Return charges assessed on a weight in excess of weight on which charges were prepaid for original movement in opposite direction. Overcharge should be refunded. *Strobel Co. v. I. C. R. R. Co.* 707.

PACKING.

Proceedings put in issue only ratings on condensed or evaporated milk (liquid) when packed in metal cans, in boxes; but nothing was made to appear warranting any difference in rating on these commodities when so packed and when in other forms of package which at present take same ratings. *Hires Condensed Milk Co. v. P. R. R. Co.,* 441 (443).

PANAMA CANAL.

Respondents were not prepared to justify the discrimination which would apparently result from cancellation of rates in connection with lines operating through the canal. *Boston-New York Proportional Rates,* 61 (62).

PANAMA CANAL—Continued.

Ocean rates from Atlantic seaboard via Panama Canal, which might form a basis for relief sought, not available to shippers, owing to slides in the canal. Cast-Iron Pipe from North Carolina Points, 183 (184).

Canal closed by slides, preventing the passage of ships. The Tehuantepec Railroad is not available as a link in a through route on account of war conditions in Mexico. The Panama Railroad is not in condition to handle traffic which steamboat lines could bring to it. Rates on Iron and Steel Articles, 237 (239).

With the Panama Canal temporarily unavailable and the enormous demand for ships in the European trade, it seems unlikely that in the near future any great amount of this traffic will move by water from the Atlantic seaboard to the Pacific coast at any rate less than 40 cents. Iron and Steel from Pacific Coast Points, 545 (547).

PANAMA CANAL ACT. *See* **BOAT LINES.**

PAPER.

How paper is made, briefly outlined, and production of various kinds of paper in the United States for the years 1909 and 1914, shown. Official Classification Rates on Paper, 120 (124, 125).

PAPER RATES.

There is no movement of colled elm hoops from points cited in comparison with the proposed rate from Chaffee, Mo., to Thebes, Ill. Increased rate not justified. Hoops from Chaffee, Mo. 482 (484).

PART LOT. *See* **FOLLOW LOT.**

PARTIES. *See also* **ASSIGNMENT; DAMAGES.**

Carriers who received the separately established part of the through rate assailed are properly before the Commission, and while the eastern roads which participated in the transportation would be proper parties they are not necessary parties. *Lucey Co. v. A., T. & S. F. Ry. Co.* 264 (267).

Necessary parties defendant are wanting. Relief desired can not be ordered in this proceeding, but this finding is without prejudice to further action by complainants. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 278 (280).

The inhibition of the long-and-short-haul clause embraces hauls over the lines of any number of carriers, and together they are responsible for undue discrimination arising from its violation. *Bennett & Son. v. C. & O. Ry. Co.* 310 (314).

No one with personal knowledge of facts concerning the shipment appeared at hearing, while bill of lading shows that complainant was neither consignor nor consignee. On such a record reparation can not be awarded. *Phillips Coal Co. v. S. A. & A. P. Ry. Co.* 340.

Certain shipments moved over road not made party defendant, but which was purchased by one of the defendants before complaint was filed. Reparation found due upon shipments which moved over the former may be required to be made by the latter. *West Lumber Co. v. St. L. & S. F. R. R. Co.* 401 (404).

Successors in interest: Affairs of Flour City line were taken over by complainant, including its assets and accounts receivable. *Flour City S. S. Co. v. L. V. R. R. Co.* 729 (730).

Stranger to transportation records not entitled to reparation. *Robinson Co. v. Am. Exp. Co.* 733 (735).

PASSENGER FARES.

Cancellation of joint fares from Milwaukee, Wis., to Coopersville, Nunica, and Muskegon, Mich., on the line of the G. R., G. H. & M. Ry., found not justified. *Passenger Fares from Milwaukee, Wis.* 98.

PAST RATES.

The mere fact that rates proposed to be increased have been in effect for many years does not require that they should be continued indefinitely, if as a matter of fact they are not just and reasonable. *New Orleans-Texas Rates*, 1 (10).

Rates on rock salt from Louisiana points to Fort Worth and North Fort Worth, Tex., found unreasonable. Former rate restored. *Swift & Co. v. M. L. & T. R. R. & S. S. Co.* 242.

Evidence insufficient to overcome presumption of reasonableness which attaches to rates through their long use. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (655).

PIERS.

State pier at Boston is in effect a competitor of similar facilities of private ownership, and is entitled to no preferential treatment from carriers. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (650).

POINTS OFF LINE. *See also* INDUSTRIAL SWITCHING.

Statement that a common-carrier railroad is under no obligation to haul cars at its own cost beyond its own rails is subject to qualification. *Westport Stone Co. and Big Four Stone Co. Case*, 316 (318).

Union Pacific tariff which authorized transit at stations on its lines did not authorize transit at industries not reached by Union Pacific tracks. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 682 (684).

PORT COMPETITION. *See* COMPETITION (PORT).**POSTING.**

Rules and rates of commission governing auction sales to be published, posted, and adhered to by auction company. *Andrews Bros. Co. v. P. R. R.* 165 (167).

POTENTIAL COMPETITION. *See* COMPETITION (POTENTIAL).**PREFERENCES AND PREJUDICES.****Articles:**

Rate on logs found unjustly discriminatory to extent that it exceeded rate on piles and telephone poles. *Sheets v. L. & N. R. R. Co.* 299.

Rate on blacksmith coal from Chicago, Ill., to Twin Falls, Idaho, not found discriminatory as compared with rate on other soft coal. *Berry Coal & Coke Co. v. C. & N. W. Ry. Co.* 347.

Contention that rate from certain Michigan mills to Chicago is unduly prejudicial against paper as an article of traffic, not sustained. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (521).

Localities:

Portland, Seattle, Tacoma, and Astoria have a closer geographic and economic relation one to the other than is reflected in the tariffs of defendant carriers, and the latter unduly discriminate against Astoria and unduly prefer the Puget Sound ports. *City of Astoria v. S., P. & S. Ry. Co.* 16 (27).

Rates on tropical fruits from New Orleans to Texarkana found unduly prejudicial to extent that they exceed by more than 10 cents the rates from New Orleans to Shreveport. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

- Rates on coal from Coalmont, Colo., to points in Wyoming, Colorado, Kansas, and Nebraska found unjustly discriminatory to extent they exceed rates from Hanna, Wyo., by more than 25 cents per net ton. Northern Colorado Coal Co. v. C., W. & E. Ry. Co. 73.
- From Pacific coast points, and from Clinton, Iowa, sash and doors take same rates as lumber; from Oshkosh, Wis., to Chicago the rate on sash and doors is higher. Carriers given 60 days to remove unjust discrimination resulting from this lack of uniformity. Anson, Gilkey & Hurd Co. v. S. P. Co. 105 (107).
- Neither the unreasonableness nor discriminatory character of rates from Wisconsin to points in central freight association territory and other points is established of record. Official Classification Rates on Paper, 120 (150).
- Rates on bituminous coal from South Canon, Colo., to points in Wyoming, South Dakota, Nebraska, and Kansas found unjustly discriminatory in so far as they exceed the rates from Walsenburg, Colo., by more than 25 cents per net ton. Rates from Cameo-Palisade district not unjustly discriminatory. South Canon Coal Co. v. C. M. Ry. Co. 174.
- Rates on bituminous coal from South Canon, Colo., to various points found unjustly discriminatory in so far as they exceed rates from Walsenburg, Colo., by more than 25 cents per net ton. *Id.* 174.
- Norfolk, Va., subjected to undue prejudice and disadvantage in violation of section 3 by reason of rates on commercial fertilizer therefrom to North Carolina points higher than for like distances between points in North Carolina. Royster Guano Co. v. A. C. L. R. R. Co. 190 (193).
- Contention that Jackson, Mich., is discriminated against because it does not have applied to it on bar steel from Pittsburgh and Youngstown rates in accordance with a strict application of the central freight association mileage scale, not sustained. Jackson Chamber of Commerce v. P. & R. Ry. Co. 233 (236).
- Rates on lumber from Bonners Ferry, Idaho, to Montana consuming points found unjustly discriminatory as compared with rates from Libby and Eureka, Mont., to same points, and a proper relationship is prescribed. Bonners Ferry Lumber Co. v. G. N. Ry. Co. 268.
- Rates on lumber from Bonners Ferry, Idaho, to points in North Dakota and Minnesota found unreasonable and unjustly discriminatory as compared with rates from western Montana lumber-producing points to same destinations. Nondiscriminatory rates prescribed. *Id.* 268.
- Rate on refuse sirup from Colorado and Nebraska points to Kansas City not found discriminatory in comparison with rate to St. Louis; but the provision of transit service at Omaha, while refusing to furnish similar service at Kansas City, unjustly discriminates against the latter. Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co. 307 (309).
- Rate on crude petroleum oil from Cushing, Okla., to Joplin, Mo., found unjustly discriminatory to extent it exceeded lower rate applicable from Cushing to southeastern Kansas refineries and from other oil-producing points in Oklahoma to Joplin. Willhoit Refining Co. v. M., K. & T. Ry. Co. 358 (359).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Port Arthur is not unduly discriminated against because in equalization of the ports New Orleans has no higher rates on cottonseed cake and meal. Cottonseed Products to Port Arthur, Tex. 378 (385). Maintenance of a rate from Texas points, which includes at Galveston and other ports a wharfage charge and which does not include such wharfage charge at Port Arthur, results in unjust discrimination against Port Arthur. *Id.* (388).

Rates on hardwood logs and bolts from points in Arkansas, Louisiana, and Oklahoma to Memphis, Tenn., found unduly prejudicial as compared with rates to other points and with rates applicable on Arkansas intrastate traffic. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (439).

Carload and less-than-carload rate adjustment on condensed and evaporated milk in cans, boxed, in and between eastern trunk line and New England territories, from these territories to central freight association territory, and from central freight association territory to New England territory, held unjustly discriminatory. *Hires Condensed Milk Co. v. P. R. R. Co.* 441 (443).

Commission should not lightly, nor upon grounds which do not seem convincing, find that rate differences which may be capable of explanation or defense upon a complete record are tantamount to undue discrimination, especially where such finding would result in what may be an unnecessary disruption of a rate fabric established for intrastate traffic. Record held open to permit further hearing on issue of alleged unjust discrimination against La Crosse, Wis. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (463).

Rates on potatoes from Cape Charles R. R. stations to Philadelphia and New York found unjustly discriminatory and rates no higher than rates from Cape Charles prescribed. Reparation denied. *Scott v. C. C. R. R. Co.* 467 (473).

Evidence fails to show that rates on paper from mills in Michigan to Chicago, Ill., to Illinois territory generally, to western trunk line territory, or to trans-Missouri territory are unduly prejudicial. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517.

Rate on paper from Wisconsin Mills to New Orleans found unjustly prejudicial to Michigan mills and maximum rate prescribed. *Id.* (526).

Class rates from Duluth, Minn., and Superior, Wis., to Sioux Falls, S. Dak., not found unjustly discriminatory as compared with cities alleged to be unduly preferred by lower rates from the east. *Traffic Bureau, Sioux Falls Commercial Club, v. G. N. Ry. Co.* 531.

Rate at present applied from Chicago to Spokane, Wash., made up of the commodity rate to the Pacific coast plus 75 per cent of the local rate from the terminal eastward creates a discrimination against Spokane. *Iron and Steel from Pacific Coast Points*, 545 (546).

Failure of respondents to publish joint through rates from points on the C. & N. W. Ry. to points on the C., M. & St. P. Ry., while maintaining such rates from points on other lines in same producing territory to same consuming points, subjected producing points on the C. & N. W. Ry. to undue prejudice. *Lumber to C., M. & St. P. Ry. Stations*, 587 (589-590).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Cement plaster: Rates from Acme, Tex., to interstate destinations on the A., T. & S. F. Ry. found unduly prejudicial as compared with rates from Acme and Oriental, N. Mex. *American Cement Plaster Co. v. A., T. & S. F. Ry. Co.* 639.

Inequality in charges for direct loading of export grain from elevators into ocean-going vessels at Philadelphia in comparison with charges imposed at New York not found unjustly discriminatory. *Commercial Exchange of Philadelphia v. P. R. R. Co.* 675 (678).

It is not found unduly discriminatory to maintain to Florida points on coal from Birmingham district rates which yield greater ton-mile earnings than are yielded by rates on like traffic to south Georgia points upon a showing of relative distances and ton-mile earnings without regard to other factors influential in rate making. *R. R. Comm. of Florida v. C. of G. Ry. Co.* 711 (714).

Persons:

As between complainant and its competitors, different physical conditions justified defendant in employing different methods in performing the service from mines and coke ovens to its rails; and in the physical service itself there was no discrimination between the several shippers. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (46).

That a carrier may contract with one agency to the exclusion of others for the performance of a function which is not transportation is established, and such arrangement does not, of itself, suffice to establish a charge of undue or unreasonable preference or advantage. *Andrews Bros. Co. v. P. R. R. Co.* 165 (167).

The mere fact that certain stockholders in the Union Fruit Auction Company are receivers of fruit does not necessarily constitute undue discrimination against receivers of fruit not interested in the auction. *Id.* (167).

Rate charged for interstate transportation of alfalfa meal from Kearney, Nebr., to East Omaha, Nebr., found unjustly discriminatory. All other shippers from same points of origin to Omaha were charged the lower intrastate rate. *Omaha Alfalfa Milling Co. v. U. P. R. R. Co.* 351.

In so far as complainant's competitors were accorded lower rates on logs in 20-carload lots they were unduly preferred and complainant discriminated against. *Wells Lumber Co. v. C., M. & St. P. Ry. Co.* 464 (466).

Refusal of trunk lines serving Muncie, Ind., to absorb switching charges of the Muncie & Western to and from industries involved while absorbing switching charges of the Muncie Belt and Lake Erie Belt to and from same industries found unjustly discriminatory. *In re Muncie & Western R. R. Co.* 510 (514-515).

Practices of the Boston & Maine in connection with absorption of connecting line charges to and from docks at Boston found unduly prejudicial to complainant and its patrons at East Boston. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (650).

PRESSURE TEST. *See* TANK CARS.

PRICE.

Price paid for coal delivered over the tipple was 20 cents per ton in excess of that paid for coal delivered in cars. It was stated that the actual cost of tipple service amounted to about 8.2 cents per ton, but the reason for paying a price so much in excess of the cost is left unexplained. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (49).

PRIVATE TRACKS.

Service over private tracks from mines and coke ovens of shippers to rails of carriers is not now nor was it during the period of the action either compelled or prohibited by statute or by common law; but whether furnished or withheld the statutory inhibition of unjust discrimination and unreasonable preference or advantage must be observed. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (44).

PRODUCTION.

In Oklahoma 20,000,000 bushels of wheat were raised in 1912, 17,500,000 bushels in 1913, 46,500,000 bushels in 1914, and output during 1915 was expected to amount to 60,000,000 bushels. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 83 (84).

Of coal in Colorado in tons for five years, 1910-1914, inclusive, by counties. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (177).

PROFIT. See **REBATES.**

PROPORTIONAL RATES.

Cancellation of proportional and transshipment rates in connection with steamship lines which operate through the Panama Canal, not justified. *Boston-New York Proportional Rates*, 61.

Record is insufficient to justify the establishment of proportional rates from La Crosse to St. Paul, Minneapolis, and Minnesota Transfer. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (458).

PROTECTION FROM WEATHER. See **SPECIAL EQUIPMENT.**

PUBLIC RECORDS.

Division sheets or statements that are filed with the Commission must be considered public records. *Filing Divisions on Railway Fuel Coal*, 169 (170).

PULLMAN ACCOMMODATIONS. See **TICKETS.**

RATE COMPARISONS. See also **MEASURE OF RATES.**

Comparisons with rates prescribed by states or directly reflecting the influence of such rates, though they have evidential value, are not conclusive. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (458).

REASONABLE RATES.

Rates may be reasonable *per se* and yet unlawful because of their unduly discriminatory character. *Through Rates to Points in Louisiana and Texas*, 153 (162).

Commission can not prescribe a rate that is less than reasonable. *Cast-Iron Pipe from North Carolina Points*, 183 (186).

The fact that a rate is *per se* reasonable does not prove that it may not be unlawful on other grounds. If rates are relatively unjust, so that an undue preference accrues under them to one person or locality, or an undue prejudice results to another person or locality, the law is violated, although the higher rates are not in themselves unreasonable. *Bennett & Son v. C. & O. Ry. Co.* 310 (318).

A rate which is unreasonable when a case is heard or decided may not have been unreasonable when shipments moved. *Federal Glass Co. v. C., R. I. & P. Ry. Co.* 331 (332).

REASONABLE RATES—Continued.

From a finding that a rate at the present time is unreasonable, it does not necessarily follow that such a rate has been unreasonable in the past; and where reparation is claimed because of an unreasonable rate, it is incumbent upon the Commission to enter upon a further consideration of whether or not the rate has in the past been unreasonable, and if so, to what extent and for what period. *Hires Condensed Milk Co. v. P. R. R. Co.* 441 (447, 448).

REBATES.

Allowance to certain companies was a mere gift, a rebate, and *ipso facto* illegal. Being an act prohibited by law, its status of illegality was not dependent upon or affected by any finding of fact the Commission could make. *Mitchell Coal & Coke Co. v. P. R. R. Co.* 40 (43).

If allowances to shippers for services rendered included appreciable profits of unequal percentages, the shippers receiving the greater percentage of profit were given unreasonable preferences and advantages over competing shippers who received no such allowances because the carrier either did or was ready and willing to perform the service. *Id.* (45).

REBILLING. See UNDERCHARGES.

RECONSIGNMENT. See also RESHIPPIING.

Demurrage charges on coal held for reconsignment at Frankfort, Mich., due to inadvertent cancellation of free-time provision, found unreasonable and reparation awarded. *Reiss Coal Co. v. A. A. R. R. Co.* 337.

Charges on coal from Coxton, Pa., to Lizton, Ind., reconsigned to Chicago, involving a back haul from Lizton to Indianapolis, not found unreasonable. *Holverscheld & Co. v. L. V. R. R. Co.* 495.

Reconsignment and diversion distinguished. *Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R. Co.* 551 (552).

The service of reconsignment or diversion is beneficial and is not only proper but may be required of the carriers. *Id.* (555).

Past practices of carriers in connection with the service of reconsignment should not now estop them from imposing a charge therefor, nor should the imposition of such charge obligate them to justify the through rates covering the receipt, conveyance, and delivery of the freight. *Id.* (557).

Provision whereby carrier reserves the option of sending cars to original destination without any previous notice to consignees after \$5 per car demurrage has accrued at holding point gives carrier opportunity to discriminate between shippers, and should be withdrawn or amended. *Id.* (559).

In view of the general advantages of the reconsignment service the Commission should examine with great care any charge or other provision that might have a tendency to deprive the public of those advantages. *Id.* (559).

Charges collected on coal from Witteville, Okla., to Gould, Okla., reconsigned to Wellington, Tex., and returned to Gould, not found unreasonable. There was no tariff authority for the reconsigning charges, but shipment was undercharged in the sum of \$216.14. *Oklahoma Fuel Co. v. Ft. S., P. & W. Ry. Co.* 576.

Charges on nut coal from Walsenburg, or Hickory Canon, Colo., reconsigned to Coldwater, Kans., and rule prohibiting reconsignment at the through rate after expiration of the first 72 hours from time of arrival of shipment at its first destination, not found unreasonable. *Colorado Fuel Co. v. C. & S. Ry. Co.* 690.

RED-LABEL REGULATIONS.

Empty cylinders not subject to. *Classification of Cylinders*, 198 (200).

REDUCTION IN RATES. *See also* **RESTORED RATES.**

Complaint that fifth-class rates on surface-coated printing paper from Saugerties, N. Y., to various points are unreasonable, met by defendants' willingness to establish rates equivalent to sixth-class rates. *Cantine Co. v. C., H. & D. Ry. Co.* 151.

Rates on mine-prop logs from Thelma and Vaughan, N. C., to Portsmouth, Va., prescribed. *Rickards v. S. A. L. Ry.* 218.

Carriers authorized to establish from Pittsburgh and points grouped therewith rates on iron and steel articles of 65 cents to same Pacific coast ports to which the establishment of the 55-cent rates from Chicago was authorized. *Rates on Iron and Steel Articles*, 237 (241).

Rates on soda ash from Hutchinson, Kans., to Oklahoma City, Okla., and on soda ash, caustic soda, and silicate of soda from St. Louis and other points to Oklahoma City, found unreasonable and reasonable rates prescribed. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.* 392 (397).

Establishment of joint through rates on soft coal from Mohrland and Hiawatha, Utah, to points on the Santa Fe branch line from Los Angeles to National City, Cal., ordered and maximum prescribed. *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.* 474.

REFRIGERATION CHARGES.

Increased refrigeration charges on melons from Utah and western Colorado to destinations throughout the greater part of the United States and Canada, found justified. Melons retain a greater quantity of "field heat," and require more ice than do other vegetables and fruits. *Melon Refrigeration Charges*, 62 (63, 64).

REFUSAL TO CARRY.

Provision in tariffs against the acceptance for transportation of iron pipe more than 10 feet long in quantities less than 10,000 pounds found unreasonable. Carrier has no right to refuse to transport iron pipe or any other article not dangerous to handle and which is ordinarily accepted for transportation. *Knapp Supply Co. v. O. E. Ry. Co.* 627, 628.

REFUSED SHIPMENTS. *See also* **DEMURRAGE.**

Storage charges on scrap tin at Elizabethport, N. J., stored and held by carrier because consignee refused to accept shipments and later sold at public auction because no reply was received from complainants to carrier's request for disposition instructions, not found unreasonable. *Levering Bros. v. P., B. & W. R. R. Co.* 349 (350).

Consignee refused shipment and it was reeigned. Rate via route of movement not found unreasonable. *Holverscheld & Co. v. L. V. R. R. Co.* 495; *Briggs & Turivas v. C. & N. W. Ry. Co.* 505 (506).

REHEARING.

Original report on rehearing awarding reparation on lumber from points in Arkansas, Louisiana, and Texas to points in western Nebraska and Kansas adhered to and previous order reentered. *Caddo River Lumber Co. v. C. & C. R. R.* 330.

Case in which reparation on account of unreasonable rates was denied reopened and reparation awarded. *Federal Glass Co. v. C., R. I. & P. Ry. Co.* 331.

RELATIVE ADJUSTMENT. *See also DIFFERENTIALS.*

In passing upon the reasonableness of a scale or system of rates the Commission may not properly consider only points or origin and destination, but is bound to consider and give due weight to findings in other cases involving rates applicable from and to points in same general territory where transportation conditions are substantially similar, in order that the structure of rates in any given territory may be properly related, and form as a whole a harmonious and consistent adjustment. *New Orleans-Texas Rates*, 1 (9).

A reduction in the Portland rate to and from the inland empire does not necessarily follow as an inevitable consequence of a reduction in the Astoria rates to the basis of the Seattle and Tacoma rates. *City of Astoria v. S., P. & S. Ry. Co.* 16 (26).

Complaint contained allegation that rates from Coalmont, Colo., are unreasonable *per se*, but it is clear that complainant is interested rather in the relationship between the rates from Coalmont and Hanna, Wyo., than in the absolute amount of the rates. *Northern Colorado Coal Co. v. C., W. & E. Ry. Co.* 73 (78).

Increased rates, equivalent to the sixth-class rates, proposed for the purpose of eliminating existing inequalities and inconsistencies in the rate adjustment, justified; but certain departures from the sixth-class basis disapproved. *Official Classification Rates on Paper*, 120, 123.

Carriers authorized to establish a rate which shall not exceed that from Chattanooga, Tenn., or Birmingham, Ala., by more than 5 cents per 100 pounds. *Cast-Iron Pipe from North Carolina Points*, 188.

Rates from Mason City to Louisiana points found unjustly discriminatory to extent that they exceed Chicago rates by more than 2½ cents on packing-house products and by more than 5 cents on fresh meats. *Decker & Sons v. M. & St. L. R. R. Co.* 223 (231).

So long as there shall be maintained at Port Arthur no charge for wharfage on foreign shipments carriers shall be required to maintain rates to Port Arthur which shall not exceed rates to Beaumont by amounts greater than rates to Galveston for ship-side deliveries exceed rates to Houston. *Cottonseed Products to Port Arthur, Tex.*, 878 (888).

That the spread between rates from Michigan mills and Wisconsin mills should be at least 1½ cents greater than at present is clearly shown of record. Carriers concede that some readjustment is necessary, and it should be promptly made. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (524).

No justification appears for making rate on paper to Shreveport, La., higher from Vicksburg, Mich., than from other Michigan points, and rate from Vicksburg should be readjusted accordingly. *Id.* (526).

Carload rates on fertilizer from Mount Pleasant, Tenn., to various destinations in Kentucky, Alabama, and Mississippi considered and rates to certain destinations found unreasonable. Reparation awarded and reasonable rates prescribed. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 602.

Rate on cement plaster from Acme and Oriental, N. Mex., is blanketed to certain stations on the A., T. & S. F. Ry. for an average distance of over 500 miles. To points taking higher rates via that carrier than this group, rates from Acme, Tex., should not exceed those from Acme and Oriental, N. Mex. *American Cement Plaster Co. v. A., T. & S. F. Ry. Co.* 639 (641-642).

RELATIVE RATES. *See also PREFERENCES AND PREJUDICES (Localities).*

Assumption that rates on tropical fruits from New Orleans to Little Rock, Fort Smith, Topeka, Wichita, and Hutchinson are based upon rates to Memphis and Kansas City, as the Texarkana rate is based upon the Shreveport rate, is not correct; and differences cited can not be taken as a proper measure of the difference between rates to Texarkana and Shreveport. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (60).

Rates on beer from San Diego, Cal., to points on the Santa Fe in Arizona and New Mexico not found unreasonable or unduly prejudicial as compared with rates from San Francisco, Kansas City, St. Louis, and Omaha. *Mission Brewing Co. v. A., T. & S. F. Ry. Co.* 171 (172).

Rates on gum and oak staves from Broken Bow, Okla., to Fresno and San Francisco, Cal., found unreasonable to extent that they exceeded rates from Valliant, Okla., and to other points found unreasonable to extent that they exceeded by more than 2 cents the rates from Valliant. *Adams Stave Co. v. T., O. & E. R. R. Co.* 203 (204).

Rates on petroleum and certain of its products from Cowley, Wyo., to Highwood and Coffee Creek, Mont., found unreasonable. Rates cited in comparison for similar distances are lower. *Mutual Oil Co. v. O., B. & Q. R. R. Co.* 221 (222, 223).

Rate on grain from Rosholt, S. Dak., to Duluth, Minn., established and maintained while road was under construction, not found unreasonable. Comparisons made with rates from points not served by defendant carrier are not convincing. *Miller Elevator Co. v. F. & V. Ry. Co.* 224 (225).

Rates on packing-house products and fresh meats from Mason City, Iowa, which is grouped with St. Paul, to Arkansas and Texas points not found unreasonable as compared with rates from other Iowa points which are on the Chicago basis. *Decker & Sons v. M. & St. L. R. R. Co.* 228 (229, 230).

Rates on lumber from Montana producing points to Montana consuming points are relatively lower than rates from Bonners Ferry, Idaho. Proper relationship prescribed. *Bonners Ferry Lumber Co. v. G. N. Ry. Co.* 268 (270, 275).

Rate on crude petroleum oil from Cushing, Okla., to Joplin, Mo., found unreasonable to extent that it exceeded rate applicable from Cushing to southeastern Kansas refineries and from other oil-producing points in Oklahoma to Joplin. *Wilhoit Refining Co. v. M., K. & T. Ry. Co.* 358 (359).

Rate on yellow-pine lumber from Akron, Ala., to Richélieu, Quebec, not found unreasonable as compared with the rate from Akron to Montreal. *Prendergast Co. v. A. G. S. R. R. Co.* 361.

Rates on soda ash from Hutchinson, Kans., St. Louis, Mo., and other points to Oklahoma City, Okla., compared with rates from same points to various other destinations, found unreasonable, and reasonable rates prescribed. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.* 392 (394-397).

Rates on coal from Arkansas points to Onalaska, Tex., compared with rates to points in the general vicinity of Onalaska from which complainant encounters competition, found unreasonable and reasonable rates prescribed. *West Lumber Co. v. St. L. & S. F. R. R. Co.* 401 (404).

Class rates from Duluth, Minn., and Superior, Wis., to Sioux Falls, S. Dak., not found unreasonable. The existence of lower rates per mile from Chicago to Missouri River and to Iowa cities taking rates graded with relation to rates to the Missouri River does not at all prove that Sioux Falls rates are unreasonable. *Traffic Bureau, Sioux Falls Commercial Club, v. G. N. Ry. Co.* 531 (533-534).

RELATIVE RATES—Continued.

Rates on potatoes from Cape Charles R. R. stations to Philadelphia and New York found unreasonable to extent that they exceed rates from Cape Charles by more than 4 cents. Reparation denied. *Scott v. C. C. R. R. Co.* 467 (473).

The wide difference in rail rates to Washington on the one hand and to Fredericksburg, Richmond, and Petersburg on the other presents a situation of relative injustice to business interests of Washington. Chamber of Commerce of Washington, D. C., *v. P. R. R. Co.* 593 (595).

Comparisons show that rates on crushed stone from Graysville, Ga., to Chattanooga, Tenn., and Florida points were not out of line with rates on crushed stone for similar distances in same and other territory. *Catoosa Limestone Products Co. v. W. & A. R. R. Co.* 614 (616).

No reason appears for according rates to Eastman, Ga., on any different basis than obtains for rates to other points in same territory. Unjust discrimination removed by previous orders. Shippers of Eastman, Ga., *v. S. Ry. Co.* 672 (674).

Relationship between Florida points and south Georgia points: Rates on coal from Birmingham district to Florida points not found unduly discriminatory. *R. R. Comm. of Florida v. C. of G. Ry. Co.* 711.

Rate on fruits and berries from Hood River, Oreg., to Winnipeg, Brandon, and Portage la Prairie, Manitoba, found unreasonable as compared with rate from White Salmon, Oreg., to same destinations. Reasonable rates prescribed. *Robinson Co. v. Am. Exp. Co.* 733.

Rate on cull and windfall apples from Troy, Kans., to Pawnee, Nebr., found unreasonable to extent that it exceeded a mileage scale rate from other Kansas points to points in Nebraska subsequently published from Troy to Pawnee. *Haarmann Vinegar & Pickle Co. v. C. R. I. & P. Ry. Co.* 737.

RES ADJUDICATA.

While the Commission has never applied the principles of *stare decisis* and *res adjudicata* as they have been enforced in courts of law, it has been uniformly held that where a particular rate of adjustment has previously been presented and conclusions announced with respect thereto, the views so announced are controlling unless conditions are made to appear in a subsequent presentation which justify or require a different conclusion. *Hires Condensed Milk Co. v. P. R. R. Co.* 441 (445).

RESERVATIONS. See TICKETS.

RESHIPPING.

Local distance rate from Tuscor, Mont., to Clark's Fork, Idaho, on lumber for beyond, found lawfully applicable. There is no evidence that lumber shipped actually was reshipped from Clark's Fork. *MacGillis & Gibbs Co. v. N. P. Ry. Co.* 633 (634).

Rule requiring execution of a certificate in connection with reshipping rates on bran from Memphis to Gulfport was inapplicable to shipments involved. Joint rate applicable not alleged to be unreasonable and complaint dismissed. *Hunter-Robinson-Wenz Milling Co. v. St. L., I. M. & S. Ry. Co.* 695.

RESTORED RATES.

Former 55-cent rate on beer, San Diego, Cal., to Phoenix, Ariz., via the Southern Pacific, must be restored. Rate via the Santa Fe, a longer route, is 55 cents, and no justification was made of the increased rate. *Mission Brewing Co. v. A., T. & S. F. Ry. Co.* 171 (172).

RESTORED RATES—Continued.

Rates on rock salt from Louisiana points to Fort Worth and North Fort Worth, Tex., found unreasonable to extent that it exceeds the former rate which is prescribed as maximum for future. *Swift & Co. v. M. L. & T. R. R. & S. S. Co.* 242 (244).

Rate applicable on box material from New Orleans, La., to Durham, N. C., found unreasonable to extent that it exceeded the former and subsequently reestablished rate, and defendants are authorized to waive outstanding undercharges. *Alcus & Co. v. I. C. R. R. Co.* 493 (494).

Rate per 100 pounds assessed on refined petroleum in tank cars from Freemansburg, Pa., to Constable Hook, N. J., found unreasonable to extent that it exceeded rate per barrel of 50 gallons previously in effect and subsequently restored. *Columbia Oil Co. v. C. R. R. Co. of N. J.* 725.

RETROACTIVE. See also TRANSIT PRIVILEGES.

Upon a complaint and answer seeking a tariff construction sanctioning the retroactive application of a mixed feed transit arrangement of the C., B. & Q. R. R. Co. at Omaha, Nebr., Held, That the complaint must be dismissed. *Peters Mill Co. v. C., B. & Q. R. R. Co.* 245.

RETURNED SHIPMENT.

Rate on an l. c. l. shipment of wood moldings returned from New Orleans to Cincinnati not found unreasonable. It is not shown that defendants were responsible for its return. *Strobel Co. v. I. C. R. R. Co.* 707.

REVENUE.

Respondent found justified in seeking to increase its net revenues for transportation of import and export freight via Commonwealth pier at Boston. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (652).

REWEIGHING. See also WEIGHT.

If a switching carrier participates in the through movement of a car, a reweighing of the car is included in the transportation which it is its duty to perform upon reasonable request. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (81).

A car to be reweighed is not properly chargeable with any empty movement. *Id.* (82).

Charges for reweighing carload freight after placement at industry or team track found unreasonable to extent that they exceed 75 per cent of the industrial switching rates contemporaneously in effect. *Id.* (85).

If reweighing develops a shortage in excess of the tolerance, no charge should be made against the shipper; and inability of carriers to agree as to whether all or part of the reweighing charge should, in such instance, be paid by the line-haul carrier should not be used as an excuse to increase charges to be paid by shipper. *Id.* (86).

No opinion expressed as to how the reweighing charge should be divided as between defendants and their line-haul connections. *Id.* (86).

RISK.

The personal danger attending the handling of cars containing dangerous commodities is not restricted to railroad employees. Whether in motion or at rest there is an undefined danger zone about them; and some accidents have occurred despite the exercise of reasonable care and caution. *National Petroleum Asso. v. A., T. & S. F. Ry. Co.* 65 (68).

It is the duty of both carriers and shippers, not only with respect to their obligations one to the other, but in consideration of the general public interest, to take no avoidable risks. *Id.* (71).

RISK—Continued.

Building and roofing papers are not easily damaged in transit and it is not necessary to ship them in the best cars. Official Classification Rates on Paper, 120 (144).

ROUTES. *See also MISROUTING.*

Charges on lumber from Meehan Junction, Miss., to Chicago, Ill., routed through Louisville in accordance with consignor's instructions, not found unreasonable. The availability of other routes at a lower rate is not enough to prove that rate charged over route selected by consignor was unreasonable or discriminatory. Hettler Lumber Co. v. A. & V. Ry. Co. 117, 118.

A finding of damage can not be based on defendants' failure to maintain what complainant considers a reasonable joint rate over some other and more direct routes. Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co. 278 (280).

The establishment of a joint rate over a different route from the route of movement is not enough to condemn the combination rate applicable over the route of movement. Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co. 338 (339).

The Salt Lake route for grain from Idaho and Utah points to Los Angeles is not unreasonably long as compared with the route by way of the Salt Lake line to San Bernardino and Santa Fe line beyond. Grain to California Points, 367 (369).

Ocean-and-rail tonnage to Charlotte moves mainly through Norfolk; competition is more active via this route than via Charleston; and routes through Norfolk and Wilmington will adequately serve the needs of this locality for the future. Ocean-and-Rail Rates to Charlotte, N. C. 405 (410).

The Salt Lake route having admitted that the natural routing of coal to points involved south of Los Angeles is via San Bernardino, it should turn over this traffic to the Santa Fe at that point. Consolidated Fuel Co. v. A., T. & S. F. Ry. Co. 474 (477).

Application of a lower rate over other routes does not warrant condemnation of rate charged. Holverscheid & Co. v. L. V. R. R. Co. 495 (496).

It has been held repeatedly that the existence of lower rates over routes other than a particular route of movement and subsequent reduction of the rate over the particular route is not sufficient to establish the unreasonableness of the previous rate. Tallahatchie Lumber Co. v. Y. & M. V. R. R. Co. 501 (502).

No presumption of unreasonableness attaches to a rate over a particular route because a lower rate applies over another route, and there is no other showing that the rate charged was unreasonable. Briggs & Turivas v. C. & N. W. Ry. Co. 505 (506).

Rate on fertilizer from Mount Pleasant, Tenn., to Tupelo, Miss., via route of movement not found unreasonable, but no opinion is expressed concerning its propriety over the short route in connection with carrier not made a party defendant. Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co. 602 (605).

Joint rate not unreasonable over route of movement by reason of a lower combination rate over another route, the joint rate being the same via both routes. Hammer v. A. C. L. R. R. Co. 621 (622).

Rate on canned berries from Puyallup, Wash., to Salt Lake City, Utah, via Silver Bow, Mont., not found unreasonable. A route was open at the rate asked and damage sustained, if any, was avoidable. Puyallup & Sumner Fruit Growers' Asso. v. N. P. Ry. Co. 701 (702).

ROUTING. *See also* MISROUTING.

Lumber from Philip, Miss., to South Bend, Ind., moved according to shipper's routing instructions. Convenient routes were available to complainant over which shipments could have moved at the lower rate asked and damages alleged could have been avoided. *Tallahatchie Lumber Co. v. Y. & M. V. R. R. Co.* 501 (502).

Scrap iron from Hammond, Ind., to South Milwaukee, Wis., moved according to routing instructions. No presumption of unreasonableness attaches to a rate over a particular route because a lower rate applies over another route, and there is no other showing that rate is unreasonable. *Briggs & Turivas v. C. & N. W. Ry. Co.* 505 (506).

Provisions of bill of lading were impossible of execution and it was the duty of initial carrier's agent to call upon consignor for further instructions before forwarding the shipment. *Peerless Wire Fence Co. v. Wabash R. R. Co.* 721 (722).

RULES AND REGULATIONS.

Carriers have the right to make reasonable and appropriate rules respecting the acceptance and transportation of traffic. *Longo Fruit Co. v. I. T. System*, 487 (489).

RULES OF PRACTICE.

Rule III, cited. *Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 855; *Meeds Lumber Co. v. F. & G. R. R. Co.* 490; *Bradley Timber & Railway Supply Co. v. M. & I. Ry. Co.* 497; *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 498; *Staten & King Hardware Co. v. P. Co.* 736.

SAILINGS.

Sailings to Norfolk from eastern port cities are more frequent than those to Charleston. *Ocean-and-Rail Rates to Charlotte, N. C.* 405 (407).

SECTION 1.

Detroit Coal Exchange v. M. C. R. R. Co. 79 (81); *Longo Fruit Co. v. I. T. System*, 487 (489); *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (521).

SECTION 2.

Mitchell Coal & Coke Co. v. P. R. R. Co. 40 (44); *Continental Can Co. v. B. & O. R. R. Co.* 618 (620).

SECTION 3. *See also* PREFERENCES AND PREJUDICES.

Mitchell Coal & Coke Co. v. P. R. R. Co. 40 (44); *Royster Guano Co. v. A. C. L. R. R. Co.* 190 (193); *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (439); *In re Muncie & Western R. R. Co.* 510 (515); *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (521); *Continental Can Co. v. B. & O. R. R. Co.* 618 (620).

SECTION 4. *See also* COMPETITION (WATER); LONG-AND-SHORT HAUL; THROUGH AND LOCAL.

New Orleans-Texas Rates, 1 (6); *Marble from Rutland, Vt.*, 13 (15); *Advance Bedding Co. v. A., T. & S. F. Ry. Co.* 31; *National Rolling Mill Co. v. C. & E. I. R. R. Co.* 108; *Through Rates to Points in Louisiana and Texas*, 153; *Mission Brewing Co. v. A., T. & S. F. Ry. Co.* 171 (172); *Merchants Produce Co. v. O.-W. R. R. & N. Co.* 209 (210, 211); *Gilman & Co. v. M. C. R. R. Co.* 213 (215); *Rates on Iron and Steel Articles*, 237 (240); *Curtis & Gartside Co. v. A., T. & S. F. Ry. Co.* 276; *Pillsbury Flour Mills Co. v. C., R. I. & P. Ry. Co.* 290; *McCaull-Dinsmore Co. v. G. N. Ry. Co.* 297 (298); *McCaull-Dinsmore Co. v. N. P. Ry. Co.* 305 (306); *Bennett & Son v. C. & O. Ry. Co.* 310 (314); *Lumber between*

SECTION 4—Continued.

Points in Western Trunk Line Territory, 370 (376); Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 411; Wells Lumber Co. v. C., M. & St. P. Ry. Co. 464 (466); Hoops from Chaffee, Mo., 482 (483); Stone Producers Sales Co. v. C., I. & L. Ry. Co. 485 (486); Darragh Co. v. C., R. I. & P. Ry. Co. 549; Oklahoma Fuel Co. v. M., K. & T. Ry. Co. 585; Chamber of Commerce of Washington, D. C., v. P. R. R. Co. 593; Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co. 602; Bituminous Coal from Points on Pennsylvania R. R., 658; Bates on Iron and Steel Articles to Spokane, 669 (671); Shippers of Eastman, Ga., v. S. Ry. Co. 672 (674); Updike Elevator Co. v. C., R. I. & P. Ry. Co. 687; Ulland Coal Co. v. L. & N. R. R. Co. 704 (706).

SECTION 5. *See also* BOAT LINES.

Peninsula & Occidental S. S. Co. 662.

SECTION 6.

Mitchell Coal & Coke Co. v. P. R. R. Co. 40 (44); Filing Divisions on Railway Fuel Coal, 169 (170); Oden-Elliott Lumber Co. v. S. Ry. Co. 304.

SECTION 15. *See also* DISCLOSING INFORMATION.

Mitchell Coal & Coke Co. v. P. R. R. Co. 40 (44); In the Matter of Freight Bills, 91; Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co. 278 (280).

SECTION 16.

Filing Divisions on Railway Fuel Coal, 169 (170).

SHORT HAUL.

The Salt Lake route declines to allow itself to be short hauled on its Los Angeles coal by opening an additional route via San Bernardino to such traffic as the Santa Fe may be able to secure in competition with it; but such a disagreement between these defendants concerning coal destined for Los Angeles can have no bearing upon the issue of reasonableness of rates involved. Consolidated Fuel Co. v. A., T. & S. F. Ry. Co. 474 (476).

SPECIAL EQUIPMENT. *See also* TANK CARS.

Question of whether or not it is the legal duty of carriers to furnish instrumentalities for transportation of certain dangerous commodities not passed upon. National Petroleum Asso. v. A., T. & S. F. Ry. Co. 65 (71). Complainants' tonnage does not appear to be sufficient to warrant refrigerator or heated car service for perishable commodities from St. Louis and East St. Louis. Longo Fruit Co. v. I. T. System, 487 (489).

SPECIAL SERVICES. *See* DIVERSION; RECONSIGNMENT.

SPREAD OF RATES.

Propriety of establishing a spread between rate on rough quarried marble and rate on other marble should be considered in publishing new schedules. Marble from Rutland, Vt., 13 (15).

STANDARD AND DIFFERENTIAL ROUTES.

Differential routes, New York City to Chicago, are in most instances longer than standard routes. Official Classification Rates on Paper, 120 (127).

STARE DECISIS. *See* RES ADJUDICATA.

STATE OWNERSHIP.

State-owned pier at Boston is in effect a competitor of similar facilities of private ownership, and is entitled to no preferential treatment from carriers. National Dock & Storage Warehouse Co. v. B. & M. R. R. 643 (650).

STATE RATES. *See also* ILLINOIS CLASSIFICATION.

Commission can not properly give weight to the possible result of a proceeding in which rail carriers seek authority to raise their state rates between New Orleans and Shreveport, which advance, if sufficient, would eliminate the rate disparity which gave rise to this complaint. *Texarkana Freight Bureau v. I. C. R. R. Co.* 55 (58, 60).

Carriers contend that state rates, filed with Commission for application on through shipments where no specific through rates are published, are subject to the act only in their application as proportions or remainders of through rates, and not as intermediate rates; Held, their function is essentially that of intermediate rates and they clearly fall within the meaning of that term as used in the amended fourth section. *Through Rates to Points in Louisiana and Texas*, 158 (163, 164).

It is admitted that rates prescribed by state authority on intrastate shipments of fertilizer materially affect the level of interstate rates, and are in many instances their exact measure. *Royster Guano Co. v. A. C. L. R. R. Co.* 190 (192).

Carriers should not charge higher rates on fertilizer from Norfolk to points in North Carolina than for like transportation within North Carolina, unless circumstances and conditions are so substantially dissimilar as to warrant a difference in rates. No advantage in favor of intrastate transportation shown. *Id.* (192, 198).

Factor of lower combination rate was an intrastate rate not on file with the Commission, and no violation of the aggregate of intermediates rule can be found. *McCaull-Dinsmore Co. v. N. P. Ry. Co.* 305 (306).

Rate charged for interstate transportation of alfalfa meal from Kearney, Nebr., to East Omaha, Nebr., found unjustly discriminatory. All other shippers from same points of origin were charged the lower intrastate rate. *Omaha Alfalfa Milling Co. v. U. P. R. R. Co.* 351.

Rates to intermediate points constructed in accordance with the mileage scale prescribed by state of Illinois are presumed to be reasonable and nondiscriminatory if carriers are permitted to continue to charge to river points lower rates which have been induced by water competition. *Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points*, 411 (418).

Rates on hardwood logs and bolts from Arkansas, Louisiana, and Oklahoma to Memphis found unduly prejudicial as compared with Arkansas intrastate rates. *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* 432 (439).

It is not in itself a justification of increased rates that they are a consequence of a readjustment of intrastate rates. *La Crosse Shippers' Asso. v. C. & N. W. Ry. Co.* 453 (455-456).

If the Minnesota rate structure results in subjecting an interstate shipper to any undue prejudice, and a clear case of unjust discrimination is shown upon the record, an order should be entered requiring the removal of the discrimination, which, since the interstate rates are found reasonable, would justify defendants in raising their intrastate rates to the basis of the interstate rates. *Id.* (459, 460).

Through rate which exceeded a combination rate, one component of which was not on file with the Commission, not found in violation of the act. *Stone Producers Sales Co. v. C., I. & L. Ry. Co.* 485 (486).

STATE RATES—Continued.

Intrastate rate not applicable as a factor of combination and aggregate of intermediates rule is not departed from. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 602 (608).

To withhold approval of rates found reasonable and in harmony with the general interstate adjustment in the territory involved, solely on the ground that when they become effective Danville will be at a disadvantage, compared with North Carolina points, would put both carriers and this Commission under control of state authorities in many cases involving interstate rates. *Danville, Va., Class and Commodity Rates*, 742 (745).

STEUBENVILLE, WELLSBURG & WEIRTON RAILWAY COMPANY.

The Steubenville Company has suffered from its relations with affiliated companies and is in a position to reduce its operating expenses by reducing the track rental and bridge toll paid by it, and by purchasing its power direct from producing companies. *City of Steubenville, Ohio, v. Tri-State R. & E. Co.* 281 (286).

STOCK OWNERSHIP. See INTERCORPORATE RELATIONSHIP.**STORAGE.**

Charges assessed by delivering carrier on scrap tin at Elizabethport, N. J., stored and held by carrier because consignee refused to accept shipments and later sold at public auction because no reply was received from complainants to request for disposition instructions, not found unreasonable. *Levering Bros. v. P., B. & W. R. R. Co.* 349 (350).

STORAGE RULES.

Uniform code of storage rules adopted by the American Railway Association has been indorsed by the Commission, but this action was taken subject to the duty to inquire into the legality or reasonableness of any rule attacked. *Commercial Exchange of Philadelphia v. P. R. R. Co.* 320 (322).

Storage regulations are intended primarily to prevent congestion of carriers' terminal facilities. The public interests also require that freight should be removed promptly from carriers' premises or from premises furnished by carriers as an adjunct to their terminal facilities. *Id.* (323).

Present two-day free storage rule at Philadelphia, Pa., found justified, and is not shown to be unjustly discriminatory in comparison with the longer period allowed at New York, N. Y. *Id.* (324).

Defendants' tariffs held unreasonable in that they fail to contain a rule providing for additional free storage time on account of bunching of cars by carriers. *Id.* (325).

Reduction from four days to two days in period of free storage in warehouses on flour, feed, hay, and straw received at Baltimore, Md., found justified. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 326.

Rule not designed to yield a profit to carrier, but is calculated to deter shippers from occupying carriers' equipment, storage facilities, and rights of way for too long periods. *Levering Bros. v. P., B. & W. R. R. Co.* 349 (350).

STORE-DOOR DELIVERY.

Store-door delivery service given by water lines at Washington tends to support contention that water competition is as strong at Washington as at Richmond, where no delivery service is accorded by water lines. *Chamber of Commerce of Washington, D. C., v. P. R. R. Co.* 593 (597).

SUBSEQUENTLY-ESTABLISHED RATES.

Damage awarded on basis of. *Hunt & Co. v. Bull S. S. Co.* 226 (227).

Contention that rate on posts from Remer, Minn., to Benld, Ill., was unreasonable to extent that it exceeded rate subsequently established via a shorter route, not sustained. *Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co.* 338 (339).

Rate on paving bricks from Boynton, Okla., to Denison, Paris, and Dallas, Tex., found unreasonable to extent it exceeded 6 cents to Denison, 8 cents to Paris, and $7\frac{1}{2}$ cents to Dallas, subsequently established and still in force. *Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 355.

Rate on fire-clay retorts from Altoona, Kans., to Joplin, Mo., found unreasonable to extent it exceeded a commodity rate subsequently established. Reparation awarded. *Picher Lead Co. v. M. P. R. R. Co.* 385.

Refund on basis of, denied. *Elden v. S. P. Co.* 530.

Through rate on lump soft coal from Hudson, Wyo., to Steinauer, Nebr., found unreasonable to extent that the component charged from Omaha to Steinauer exceeded the rate subsequently established. Reparation awarded. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 581.

Reparation awarded on coke from Wilkeson, Wash., to Salem, Oreg., on basis of. *Salem Iron Works v. S. P. Co.* 600 (601).

Carrier expresses willingness to make reparation on certain shipments of fertilizer, but other defendants deny that former rates were intrinsically unreasonable, and as complainant's only evidence against them is their subsequent reduction, reparation can not be awarded. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 602 (603).

Reparation awarded on call and windfall apples from Troy, Kans., to Pawnee, Nebr., on basis of rate in effect from other Kansas points and subsequently established from Troy. *Haarmann Vinegar & Pickle Co. v. C., R. I. & P. Ry. Co.* 737.

SUCCESSORS. *See PARTIES.*SWITCHING. *See also ABSORPTION.*

No obligation shown to rest upon the Big Four to switch cars beyond junction points of tracks of the respective stone companies and spurs maintained by the Big Four. *Westport Stone Co. and Big Four Stone Co. Case*, 316 (319).

Muncie & Western is a common carrier to which connecting lines may make allowances for switching services. Switching services performed by other belt railroads to and from industries involved apparently do not differ from that performed by the Muncie & Western. *In re Muncie & Western R. R. Co.* 510 (514).

There is little difficulty in concluding that the charge of \$2 per car for reconsignment requiring switching to and from hold tracks is not excessive. There can be no doubt of the justice of a scheme of graduated charges based in part upon the number and extent of the switching movements required; but the evidence does not disclose whether or not it would be practicable. *Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R. Co.* 551 (558).

Rate on coal from various points on the L. & N. R. R. in Kentucky and Tennessee to Hunt street, a point within the switching limits of Cincinnati, Ohio, not found unreasonable. *Ulland Coal Co. v. L. & N. R. R. Co.* 704.

TANK CARS.

Are now built in compliance with rules and specifications of the Master Car Builders' Association, and only such cars as have been so constructed are permitted to be used for transporting certain fluids. *National Petroleum Asso. v. A., T. & S. F. Ry. Co.* 65 (67).

The ultimate purpose of the interior pressure test is to detect any weakness in the tank and to guard against dangers resulting from the use of those that may be unsubstantial. The test was not prescribed merely with the single purpose to have tanks withstand interior pressure evolved from the contents. *Id.* (69, 71).

Average cost of a tank car, new, ranges from \$900 to \$1,200; of a new tank, including freight cost, about \$400. Tanks unable to stand the prescribed test would not necessarily be relegated to the scrap heap. *Id.* (70).

The interior pressure test rule is in the nature of a federal police regulation designed to minimize as much as possible the dangers attending the transportation of certain dangerous commodities; it is not unreasonable, and it is not shown that it will impose any unjust burden upon owners and operators of tank cars. *Id.* (72).

Rate per 100 pounds assessed on refined petroleum in tank cars from Free-mansburg, Pa., to Constable Hook, N. J., found unreasonable to extent that it exceeded rate per barrel of 50 gallons previously in effect and subsequently restored. *Columbia Oil Co. v. C. R. R. Co. of N. J.* 725.

TAP LINES.

Previous order requiring reparation on lumber from points in Arkansas, Louisiana, and Texas reentered. *Caddo River Lumber Co. v. C. & C. R. R.* 330.

TARIFFS. See also POSTING.

It is the carrier's duty in publishing its tariffs to see that they are correct, and this is no less its obligation when it undertakes specifically to show charges of its connections which it proposes to absorb under its own rates. *Chelsea Refining Co. v. M. P. Ry. Co.* 28 (29).

Defendants' tariffs naming a commodity rate on potatoes from Wisconsin points to destinations in Missouri and Kansas held lawfully applicable even though other tariffs named the class C rates applicable under western classification. *Kuehne-Chastain Commission Co. v. G. B. & W. R. R. Co.* 87 (89).

Tariffs must be enforced in accordance with their terms, and when provisions are clear and free from ambiguity no agreement between the shipper and the carrier assigning another meaning to them may lawfully be substituted; nor may this Commission sanction a departure from their plain meaning until such rules have been found to be unlawful under the act. *Peters Mill Co. v. C., B. & Q. R. R. Co.* 245 (248).

Rule published in time-tables but not in tariffs not found discriminatory. *Johnson v. A., T. & S. F. Ry. Co.* 294.

Union Pacific tariff which authorized transit at stations on its lines did not authorize transit at industries at Kansas City not reached by Union Pacific tracks. Transit tariffs can easily and should be so worded as to prevent misunderstandings by shippers or by carrier's agents. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 682 (683-684).

TERMINAL RATES.

The relation of rates as between Spokane and coast terminals is unlawful and in violation of Fourth Section Order No. 124. Rates on Iron and Steel Articles to Spokane, 669 (671).

TERMINALS.

The purchase of an additional terminal, which has not enhanced the value of the service accorded to the shipper, but which has added materially to the shippers' inconvenience, does not justify rates proposed. *Fruits and Vegetables from Norfolk, Va.* 252 (256).

Where traffic is local to defendant and no traffic advantage over other lines can be gained by preferring either pier, to say that one and not the other may be considered the carrier's terminal would invite the fictitious creation of terminals as an expedient to secure favorable rates. *National Dock & Storage Warehouse Co. v. B. & M. R. R.* 643 (650).

THREE-LINE HAUL. See CIRCUITOUS ROUTE.**THROUGH AND LOCAL.**

The limited application of the 60-cent so-called water scale from New Orleans to Beaumont and Orange, in that it is not to be used in connection with traffic from beyond, results in a departure from the aggregate of intermediates' rule of the fourth section. *New Orleans-Texas Rates*, 1 (5, 6).

Proposed through rate on rough quarried marble from Rutland, Vt., and points taking same rates, to St. Paul, Minn., and points taking same rates, found unlawful as it exceeds the aggregate rate. *Marble from Rutland, Vt.* 13 (15).

Existing rates should be purged of instances in which through rates exceed the aggregate of intermediate rates. Commission will then be willing to consider applications for authority to provide in a tariff a rule to govern in special instances. *Through Rates to Points in Louisiana and Texas*, 153 (160).

Difficulties in way of adjusting the rate situation in such a manner as to avoid departures from the fourth section are not sufficient to justify a finding that through rates may properly be continued which result in violations of the aggregate of intermediates' rule. *Id.* (160, 164).

Through rates which are higher than aggregates of intermediate rates not justified by plea that the through rates are reasonable *per se*. *Id.* (162).

Through rates between territories involved that exceed the aggregates of the intermediate rates, not justified. *Id.* (164).

Through rate on cabbage from Colma, Cal., and on melons from Monson, Cal., to Spokane, Wash., found unreasonable to extent they exceeded combinations based on Lathrop, Cal., and Portland, Oreg., respectively. Situation has since been corrected. *Merchants Produce Co. v. O.-W. R. R. & N. Co.* 209 (211).

Through rate on fresh vegetables, San Francisco to Spokane, which exceeded a combination, one factor of which was a proportional rate not applicable on fresh vegetables, not found unreasonable. *Id.* (212).

Charges on flour from Minneapolis, Minn., to Alexandria, La., based on a joint rate of 35 cents, minimum weight 40,000 pounds, found unreasonable to extent that they exceeded those that would have accrued on basis of a combination rate of 39 cents, minimum weight 30,000 pounds. *Shipment weighed 31,280 pounds. Pillsbury Flour Mills Co. v. C., R. I. & P. Ry. Co.* 290 (291).

Rate on lumber from Baden, Ga., to Columbia, S. C., found unreasonable to extent that it exceeded the aggregate of intermediates based on Savannah. Rate on lumber from Shore, Ga., to Anderson, S. C., found unreasonable to extent it exceeded aggregate of intermediates based on Augusta. Reparation awarded. *Standard Lumber Co. v. S. G. Ry. Co.* 301.

THROUGH AND LOCAL—Continued.

A joint rate may not exceed the aggregate of intermediate rates, even though one of the intermediate rates is depressed by rail or water competition. *Id.* (303).

Brick from Canton, Ohio, to Long Branch, N. J., found not to have been misrouted and rate not found unreasonable. No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because it exceeds the aggregate of intermediate rates over another. *Metropolitan Paving Brick Co. v. W. & L. E. R. R. Co.* 345 (346).

Through rate on building stone from Bedford, Ind., to Muskogee, Okla., which exceeded a combination rate, one component of which was a state rate not on file with the Commission, not found unreasonable. One point upon which the combination was based was not intermediate over routes of movement. *Stone Producers Sales Co. v. C., I. & L. Ry. Co.* 485 (486).

Rate on a mixed shipment of mineral water and ginger ale, bottled, and advertising matter, from Sheboygan, Wis., to Memphis, Tenn., exceeded aggregate of intermediate rates based on Milwaukee. Reparation awarded. *Sheboygan Mineral Water Co. v. C. & N. W. Ry. Co.* 491.

Joint rate on lumber from Elizabeth City, N. C., to Spring Grove, Pa., higher than the authorized basis for constructing through rates from Carolina points, found unreasonable and reparation awarded. *Dare Lumber Co. v. N. S. R. R. Co.* 507.

Complaint alleging that all-rail joint class rates from New York, Philadelphia, and Baltimore to Birmingham were unreasonable in that they exceeded aggregates of intermediate rates to and from Norfolk, dismissed; it appearing that the discrepancies complained of have been corrected. *Freight Bureau, Mchts. & Mfrs. Asso. v. A. C. L. R. R. Co.* 516.

Through rates on paper from Michigan mills to Oklahoma City, Okla., should be corrected so as not to exceed the combinations of intermediate rates to and from St. Louis and Chicago. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 517 (526).

Rate assessed on cotton piece goods, l. c. l., originating at Clifton Heights, Pa., from St. Louis, Mo., to Jefferson City, Mo., not found unreasonable as compared with a lower combination, one component of which was not given intermediate application, and the other component of which is a drayage charge not on file with the Commission. *Star Clothing Mfg. Co. v. M., K. & T. Ry. Co.* 537, 538.

Rate charged and rate legally applicable on coal from Witteville, Okla., to Burkburnett, Tex., found unreasonable to extent that they exceeded or exceed the aggregate of intermediate rates to and from Whitesboro, Tex. Reparation awarded. *Oklahoma Fuel Co. v. M., K. & T. Ry. Co.* 585.

Intrastate rate not applicable and aggregate of intermediates rule not departed from. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 602 (608).

Joint rate charged was not illegal over route of movement, and combination by way of another route lower than the joint rate by that route is not enough to prove that rate charged was unreasonable. *Keystone Lumber Co. v. B. & C. R. R. Co.* 702 (703).

THROUGH RATES. See also FACTOR.

When through rates are published from points in one classification territory to points in a territory in which a different classification applies they must be made subject to one or the other of such classifications. *Through Rates to Points in Louisiana and Texas*, 153 (159).

THROUGH RATES—Continued.

Through rates on soda ash and caustic soda from specific points east of the Mississippi River to Oklahoma City, Okla., found unreasonable to extent that they exceed rates made by the use of locals or differentials to St. Louis, plus the rates beyond herein found reasonable. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.* 392 (397).

Allegation of unreasonableness of charges on coal from Witteville, Okla., to Gould, Okla., reconsigned to Wellington, Tex., and returned to Gould, rests wholly upon the erroneous assumption that no through rate applied from Witteville to Wellington and needs not to be considered. *Oklahoma Fuel Co. v. Ft. S., P. & W. Ry. Co.* 576 (577).

Rate on refined petroleum from Coffeyville and Niotaze, Kans., to Superior, Nebr., which complainant attempted to avoid by rebilling on intermediate rate, found unreasonable and reparation awarded. *Mutual Oil Co. v. A., T. & S. F. Ry. Co.* 591.

THROUGH ROUTES.

If it is proposed to cancel an existing route, it is proper to consider whether or not Commission could have required the establishment of the route as an original proposition. *Ocean-and-Rail Rates to Charlotte, N. C.*, 405 (410).

No reason appears for requiring the maintenance of an additional through route where carriers parties thereto desire its discontinuance and shippers directly interested do not protest, and where it appears that the community will be adequately served if the cancellation is allowed to be made effective. *Id.* (410).

THROUGH ROUTES AND JOINT RATES.

On wheat for export from points on lines of the Santa Fe in Oklahoma to Louisiana ports which shall not exceed rates to Galveston by more than 5 cents, ordered. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 33 (37).

Defendants should establish, from Coalmont, Colo., to stations on lines of the C. & N. W., C., K. & O., M. P., and C., St. P., M. & O. railway companies, to which joint rates are published from Hanna, Wyo. *Northern Colorado Coal Co. v. C., W. & E. Ry. Co.* 73 (78).

Beer shipments from San Diego, Cal., to South Pacific stations move on through bills of lading, and no reason appears why joint rates should not apply. Negotiations should be reopened with a view to the establishment of through routes and joint rates. *Mission Brewing Co. v. A., T. & S. F. Ry. Co.* 171 (173).

Cancellation by rail lines of joint rates in connection with the Port Huron & Duluth Steamship Company between points in trunk line territory and Duluth, Minn., and other points, not justified. Public interests will be served by a continuance thereof. Mere fact of disagreement between carriers as to divisions does not prove that joint rates are unreasonable or that routes should be abandoned. *Lake and Rail Rate Cancellations*, 201 (202).

Complainant desires through routes and joint rates from Charleston, Miss., to Mobile, Ala., and Pensacola, Fla., over a direct route. Relief desired can not be ordered in this proceeding, but this finding is without prejudice to further action by complainant. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 278 (280).

THROUGH ROUTES AND JOINT RATES—Continued.

A carrier has no right, by refusing through routes and joint rates, to dictate the markets from which shippers on its line must purchase, or the territory to which industries on its line must sell, or in any other way to restrict fair competition. *Lumber to C., M. & St. P. Ry. Stations*, 587 (589).

TICKETS.

Complainant, after applying for two tickets and Pullman space from Chicago, Ill., to Albuquerque, N. Mex., on the "California Limited", was informed of a rule in the time-tables which provided that reservations would not be made to points east of Williams, Ariz., and thereupon purchased tickets to Williams. Refund for unused portions denied, and rule not found discriminatory. *Johnson v. A., T. & S. F. Ry. Co.* 294.

TIME TABLE.

Rule published in time-tables but not in tariffs to the effect that reservations of space will not be made on the "California Limited" from Chicago to points east of Williams, Ariz., with the exception of a few berths that may be used from Chicago to Kansas City not found unjustly discriminatory against Albuquerque, N. Mex. *Id.* 294.

TOLERANCE. See also WEIGHT.

If reweighing develops a shortage less than the tolerance, the shipper should pay for the extra service performed; if reweighing develops a shortage in excess of the tolerance, no charge should be made against the shipper. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (86).

TONNAGE.

Of news print paper from central freight association territory to eastern cities is almost negligible. *Official Classification Rates on Paper*, 120 (126).

Volume of tonnage moving through Charleston to Charlotte is small when compared with that through Norfolk. *Ocean-and-Rail Rates to Charlotte*, N. C. 405 (408, 410).

There is testimony that the all-rail tonnage into Washington, which moves chiefly under class rates, is more than ten times the tonnage of the water lines, and that 80 or 90 per cent of the tonnage to Richmond moves under commodity rates either by rail or by water. *Chamber of Commerce of Washington, D. C., v. P. R. R. Co.* 593 (596).

TON PER MILE REVENUE.

Ton-mile revenues under class rates, involving carload and less-than-carload shipments indiscriminately, especially in the absence of a showing of similar circumstances and conditions surrounding the transportation, are not of controlling influence. *New Orleans-Texas Rates*, 1 (6).

Showing that average ton-mile revenue on all traffic handled for some of the important routes over which commodity rate applies is considerably less than ton-mile revenue which the present commodity rate yields is of little weight unsupported by exposition of character and length of haul of traffic of each road. *Dressed Beef from New York*, N. Y. 51 (53).

Revenue on bituminous coal per net ton-mile for 1914. *Bituminous Coal from Points on Pennsylvania R. R.*, 658 (661).

Contention that rates on coal from Birmingham district to Florida points are unduly discriminatory as compared with rates to south Georgia points not sustained upon a showing of relative distances and ton-mile earnings without regard to other factors influential in rate making. *R. R. Comm. of Florida v. C. of G. Ry. Co.* 711 (714).

TRACKAGE AGREEMENT. *See also* **CONTRACTS.**

Under which the C. & O. operates to and from Lexington, Ky., over rails of the L. & N., referred to. *Greenbaum Co. v. S. Ry. Co.* 715.

TRAINLOAD RATES.

The mere fact that certain traffic is hauled in trainload lots can not be made the basis of rates different from those applied to shipments in single carloads. To permit such a practice would be in effect to allow lower rates upon a condition which only a few shippers can comply with and to do an injustice to those unable to ship the required quantity. *Wells Lumber Co. v. C., M. & St. P. Ry. Co.* 464 (465).

TRANSFER.

Responsibility for transfer of shipments of flour from end of steamers' gangplanks into cars of defendant rail carriers at Buffalo, N. Y., rested upon shippers, there being no through route or joint rate, and no tariff authority for intermediate service. *Flour City S. S. Co. v. L. V. R. R. Co.* 729.

TRANSIT PRIVILEGES.

Branding: Charges on cattle from North Fort Worth, Tex., to Big Horn Wye (Hardin), Mont., branded at Clearmont, Wyo., not found unreasonable. The subsequent publication of transit service at Clearmont does not prove that the absence of such service before was unreasonable. *Zimmerman v. C., R. I. & P. Ry. Co.* 118 (119).

Dressing in transit: Rates on lumber from Louisville, Miss., to Sylacauga, Ala., dressed in transit at Newton, Miss., not found unreasonable. Reparation awarded on account of misrouting. *Meeds Lumber Co. v. A. & V. Ry. Co.* 679 (681).

Lumber, planed, dressed, or resawed: Charges collected on lumber from Ludlavin, La., to Bowie, La., where a portion was planed and reshipped with part not planed to various destinations, held unlawful. Transit rule was not restricted to lumber wholly planed, dressed, or resawed. *Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 625, 626.

Mixed feed: Transit rule by which rate on refuse sirup contained in mixed feed outbound from Omaha should be the balance of the through rate from point of origin to the basing point, the adjustment to be accomplished by a claim settlement after shipment had moved, held insufficient to overcome the controlling general rule of defendant's tariff. *Peters Mill Co. v. C., B. & Q. R. R. Co.* 245 (247).

Mixed feed: Rate on refuse sirup to Kansas City not found unreasonable, but provision of transit service at Omaha, while refusing to furnish similar service at Kansas City, unjustly discriminates against complainant's traffic. *Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co.* 307 (309).

Mixed feed: Rates on various commodities from Indianapolis, Ind., to eastern destinations, manufactured into mixed feed at Hammond, Ind., not found unreasonable; and fact that complainant was misled into believing that the transit arrangement was available affords no ground for relief. *Chapin & Co. v. C., I. & L. Ry. Co.* 611 (613).

Reshipping: It does not necessarily follow that unjust discrimination exists because of the fact that connecting carriers in another territory far removed from Meridian, Miss., grant transit arrangements on cottonseed cake and meal; and the application of inbound rates on shipments stopped at Meridian and reshipped at outbound rates is not found unreasonable. *Meridian Grain & Elevator Co. v. A. & V. Ry. Co.* 478 (480, 481).

TRANSIT PRIVILEGES—Continued.

Stoppage in transit: Union Pacific tariff which authorized transit at stations on its lines did not authorize transit at industries at Kansas City not reached by Union Pacific tracks; and combination rates assessed on corn and oats to Kansas destinations, stopped in transit at Kansas City, not found unlawful. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 682 (683-684).

TRANSPORTATION.

When transportation is interstate some of its incidents, such as receipt, delivery, storage, demurrage, car service, and weighing, assume an interstate character. *Detroit Coal Exchange v. M. C. R. R. Co.* 79 (80).

If a switching carrier participates in the through movement of a car, a reweighing of the car is included in the transportation which it is its duty to perform upon reasonable request. *Id.* (81).

TRANSPORTATION CONDITIONS.

It is contended that the Commission should take notice of conditions of transportation disclosed in its own decided cases, but no evidence is submitted showing a comparison of transportation conditions considered in such cases with those involved. *Bennett & Son v. C. & O. Ry. Co.* 310 (312).

TRANSSHIPMENT.

Reparation awarded on account of unreasonable rates on anthracite coal from collieries in the Lehigh anthracite coal region to Elizabethport, N. J., for transshipment. *Dodson & Co. v. C. R. R. Co. of N. J.* 206.

Reasonable maximum rates on anthracite coal from Mocanaqua, Pa., and other points in the Wyoming coal region to Elizabethport, N. J., f. o. b. vessels for transshipment, were prescribed in the *Anthracite Coal case*, 35 I. C. C., 220, and no reason appears for any modification of the order therein. *Meeker & Co. v. C. R. R. Co. of N. J.* 333 (334).

TRANSSHIPMENT RATES. See PROPORTIONAL RATES.**TWO FOR ONE.**

Carrier furnished two smaller cars in lieu of 50-foot car ordered, for transportation of three motor delivery cars from Black Rock, Buffalo, N. Y., to Portland, Oreg., and charges were collected on basis of the carload rate on the first car, less-than-carload rate on the second; Held, that charges were unreasonable to extent they exceeded charges that would have accrued at the carload rate if car of dimension ordered had been furnished. *Lippard-Stewart Motor Car Co. v. M. C. R. R. Co.* 112.

TWO-LINE HAUL.

Increased rate not justified. The fact that the haul from Chaffee to Thebes is no longer a one-line haul, but is over two distinct lines, is unavailing. *Hoops from Chaffee, Mo.*, 482 (483-484).

Complexity of route is disregarded in rates on fruits and berries from Hood River, Oreg., to numerous points both east and west and in rates from White Salmon, Oreg., to numerous destinations. *Robinson Co. v. Am. Exp. Co.* 733 (735).

UNDERCHARGES.

Rate applicable on box material from New Orleans, La., to Durham, N. C., found unreasonable to extent that it exceeded the former and subsequently reestablished rate, and waiver of outstanding undercharges authorized. *Alcus & Co. v. I. C. R. R. Co.* 493 (494).

Waiver of undercharge authorized. *Dorris Motor Car Co. v. Wabash R. R. Co.* 503 (505).

UNDERCHARGES—Continued.

Charges collected on coal from Witteville, Okla., to Gould, Okla., reconsigned to Wellington, Tex., and returned to Gould, in the sum of \$144.03. Shipment found to have been undercharged in the sum of \$216.14. *Oklahoma Fuel Co. v. Ft. S., P. & W. Ry. Co.* 576 (578).

Undercharges which grew out of rebilling of certain shipments on intermediate rates in order to avoid the through charge have been paid, and reparation is awarded on such shipments on basis of rate herein found reasonable. *Mutual Oil Co. v. A., T. & S. F. Ry. Co.* 591 (592).

UNIFORM CLASSIFICATION. See also CLASSIFICATION.

The whole matter involved could be adjusted by a unification of western and southern classifications, and carriers have been and are now working to accomplish this result, but it will be some time before such a unification can be effected. *Through Rates to Points in Louisiana and Texas*, 153 (159).

USE.

The principle that differences in rates should not be predicated solely on the uses to which commodities are put presupposes like commodities. *Official Classification Rates on Paper*, 120 (140).

Manner in which rates on pine logs are published invites manipulation and misbilling, and an immediate revision is necessary. They reflect the uses to which the logs rated are put, which is illegal. *Rickards v. S. A. L. Ry.* 218 (219-220).

Elimination of special rate on fluxing stone complied with ruling that different rates may not be made on a particular commodity dependent upon use to which it is put. *Catoosa Limestone Products Co. v. W. & A. R. R. Co.* 614-615.

VALUATION OF RAILROADS.

Spokane, Portland & Seattle Ry. Co. valued at \$110,000 per mile, as against a valuation of \$79,000 per mile for the Northern Pacific. *City of Astoria v. S., P. & S. Ry. Co.* 16 (21).

VALUE OF COMMODITY.

Value is not the sole criterion of the reasonableness of a rate. *Berry Coal & Coke Co. v. C. & N. W. Ry. Co.* 347 (348).

VALUE OF SERVICE. See INVESTMENT.**VOLUNTARY RATES.**

The fact that Walsenburg rates have been extended by voluntary action of carriers to other producing points which are not as favorably located as is the Walsenburg group must not be lost sight of in considering rates from South Canon and Cameo to Denver. *South Canon Coal Co. v. C. M. Ry. Co.* 174 (180).

VOLUNTARY REDUCTION. See also SUBSEQUENTLY ESTABLISHED RATES.

Contention that no reparation should be awarded, and that complaint should be dismissed for the reason that the lower rating asked was established voluntarily, not sustained. *Dorris Motor Car Co. v. Wabash R. R. Co.* 503 (504).

Neither the misquotation of a rate nor the voluntary reduction of a rate to meet that of a competing line or route is alone sufficient to base an award of reparation. *Puyallup & Sumner Fruit Growers' Asso. v. N. P. Ry. Co.* 701 (702).

WACO, TEX.

Considered as a central point in Texas common-point territory. *New Orleans-Texas Rates*, 1 (6).

WAGON COMPETITION. *See* **COMPETITION (WAGON).**

WAGON SCALES. *See* **WEIGHT.**

WAR IN EUROPE.

Referred to. Dressed Beef from New York, N. Y., 51 (54).

It is stated that war conditions in Europe created a demand for ships in trade between Europe and America heretofore unprecedented. Diversion of boats from coastwise to the European trade, discussed. Rates on Iron and Steel Articles, 237 (239).

WAREHOUSING. *See* **STORAGE RULES.**

WATER COMPETITION. *See* **COMPETITION (WATER).**

WEAK LINES.

The Colorado Midland has been in poor financial condition for a number of years, and has been in the hands of a receiver since 1912. South Canon Coal Co. v. C. M. Ry. Co. 174 (178).

The Louisville, Henderson & St. Louis has never paid a dividend to its stockholders since its incorporation; and a denial of fourth-section relief would result in a reduction in its total revenue so great as to make it doubtful whether it could earn operating expenses. Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 411 (427).

WEIGHING SERVICE.

Commission has jurisdiction of. Detroit Coal Exchange v. M. C. R. R. Co. 79 (81).

WEIGHT. *See also* **ESTIMATED WEIGHTS; MINIMUM WEIGHT.**

Charges on coal from Corbin, B. C., to Spokane, Wash., not found based on an erroneous weight. Weight claimed was ascertained by weighing over private wagon scales. The car was weighed light after shipment was unloaded; but tariffs provide for reweighing, and the difference between billed weight and weight that would have resulted if actual tare weight of car had been used is within the approved tolerance of 500 pounds. International Fuel Co. v. S. I. Ry. Co. 622 (623).

Charges on lumber from Portland, Oreg., to McGill, Nev., under rules for ascertaining net weight, by taking the difference between gross weight of car and shipment at point of origin and actual tare at final destination, not found unreasonable. Eastern & Western Lumber Co. v. S. P. Co. 697.

Return charges assessed on a weight in excess of weight on which charges were prepaid for original movement in opposite direction. Overcharge should be refunded. Strobel Co. v. I. C. R. R. Co. 707.

WESTERN RATE ADVANCE CASE.

Part III. Rate Increases in Western Classification Territory, 94.

WHARFAGE. *See also* **ABSORPTION.**

The mere fact that the ability of Port Arthur to draw some traffic because there is no wharfage charge imposed at that point is not warrant to carriers serving Galveston to raise their line-haul rates to Port Arthur. Cottonseed Products to Port Arthur, Tex. 878 (887).

Maintenance of a rate from Texas points, which includes at Galveston and other ports a wharfage charge and which does not include such wharfage charge at Port Arthur, results in unjust discrimination against Port Arthur. *Id.* (388).

If at Port Arthur no wharfage charge is imposed Texas carriers may not rightfully name a rate to that port to include such a charge. *Id.* (388).

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